

BCI EXHIBIT

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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)

8 HOLDINGS, INC., et al, (Jointly Administered)

9 Debtors.

10 -----x

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12 * * *HIGHLY CONFIDENTIAL* * *

13 DEPOSITION OF STEPHEN KING

14 New York, New York

15 September 10, 2009

16

17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24299

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2		2 APPEARANCES:
3		3 JONES DAY, LLP
4		4 Attorneys for Lehman Brothers, Inc.
5	September 10, 2009	5 222 East 41st Street
6	9:35 a.m.	6 New York, New York 10017-6702
7		7 BY: WILLIAM HINE, ESQ.
8		8 GEORGE E. SPENCER, ESQ.
9		9
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14		14 BY: JACK STERN, ESQ.
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2	APPEARANCES:	2
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5		5 IT IS HEREBY STIPULATED AND AGREED, by
6		6 and between the attorneys for the respective
7		7 parties herein, that filing and sealing be
8		8 and the same are hereby waived.
9		9 IT IS FURTHER STIPULATED AND AGREED
10		10 that all objections, except as to the form
11		11 of the question, shall be reserved to the
12		12 time of the trial.
13		13
14		14
15		15 IT IS FURTHER STIPULATED AND AGREED
16		16 that the within deposition may be sworn to
17		17 and signed before any officer authorized to
18		18 administer an oath, with the same force and
19		19 effect as if signed and sworn to before the
20		20 Court.
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1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 STEPHEN KING,	2 firm of Hughes Hubbard & Reed. We represent
3 called as a witness by the parties,	3 the SIPA trustee, and my colleague is Fara
4 having been duly sworn, testified as	4 Tabatabai.
5 follows:	5 MR. DAKIS: I'm Robert Dakis. I'm
6 EXAMINATION BY	6 from the law firm of Quinn, Emanuel,
7 MR. HINE:	7 Urquhart, Oliver & Hedges, and we represent
8 Q. Good morning, Mr. King.	8 the official committee of unsecured
9 A. Good morning.	9 creditors.
10 Q. We met briefly off the record. My	10 MR. LAYDEN: David Layden from Jenner
11 name is Bill Hine. I am from Jones Day, which is	11 & Block.
12 the law firm representing, or acting as special	12 MR. HINE: This is Ingrid Christian,
13 counsel for Lehman Brothers Holdings, Inc. in	13 who has lost her voice, from Alvarez &
14 connection with the bankruptcy proceeding that's	14 Marsal, so I will do the honors of
15 ongoing, and this deposition is related to that	15 introducing her.
16 proceeding.	16 BY MR. HINE:
17 Have you ever been deposed before?	17 Q. Mr. King, as I'm sure your counsel has
18 A. No.	18 explained, I am going to ask you a series of
19 MR. STERN: Can we just introduce the	19 questions. You are going to provide the answers
20 other people in the room.	20 as best you can.
21 MR. HINE: Sure. Myself from Jones	21 I did want to alert you to one
22 Day, and my associate is George Spencer, who	22 procedural rule we have here. From time to time
23 will be joining us shortly.	23 during the deposition, your lawyer will
24 Do you want to go around the table?	24 undoubtedly state an objection or make some kind
25 MR. OXFORD: Neil Oxford with the law	25 of statement on the record as to the form of my
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1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 question.	2 group called PMTG.
3 MR. STERN: Very unlikely.	3 Q. And PMTG stands for what?
4 Q. I just want to let you know that does	4 A. Portfolio mortgage trading group.
5 not relieve you of the obligation to answer the	5 Principal mortgage trading group. I forgot what
6 question. It is just Jack being Jack. It is Jack	6 the P was. It has been so long since we named it.
7 doing his job, stating objections to the form of	7 Q. How long have you held that title?
8 the question.	8 A. MD I have had for three, four years, I
9 In that regard, I will undoubtedly ask	9 think, and the PMTG group was formed in late 2007.
10 a confusing question or a question that misuses a	10 Q. Could you describe for me briefly your
11 term that you folks in your profession use all the	11 duties in this position?
12 time. I feel like I am learning a new language	12 A. I run the group. It is ostensibly a
13 here in some sense. So please correct me if I	13 trading and risk management group. It is -- once
14 make a mistake with the term or abbreviation or	14 upon a time its primary asset was mortgages and
15 some kind of concept, because I really do want to	15 mortgage-related securities and derivatives
16 ask a clear question so you can then give me a	16 thereon.
17 clear answer. OK?	17 We manage a portfolio of assets which
18 A. Um-hm.	18 the bank owned that were mortgage assets, and we
19 Q. And if at any time you need a break,	19 also have a proprietary trading activity.
20 let me know. This is not an endurance test, so	20 Q. Who do you report to directly?
21 just let me know if you need a break.	21 A. I report to Eric Bommensath.
22 A. Sure.	22 Q. And do you know his title?
23 Q. Can we start with your title at	23 A. He is global head of -- global head of
24 Barclays? What is your title?	24 fixed income, I think, and there are some other
25 A. I am managing director and head of a	25 bits to it, too.

<p style="text-align: right;">Page 10</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. And who reports directly to you? 3 A. Do I need to list all of them? 4 Q. No. I'm just interested in the 5 principal folks that report to you directly. 6 A. The team is -- well, the team is 7 slightly different today than it was a few months 8 ago. It is about 30 or so people. They are -- 9 the senior folks are -- a number of them are 10 senior traders who trade a range of securities. I 11 can give you their names if you like, if it is 12 relevant, for those traders, and then there are 13 also operations and risk management personnel as 14 well. 15 Q. Could you give me the heads of the -- 16 let me just ask it this way: Is your group broken 17 into separate divisions or -- 18 A. Separate not divisions but functions. 19 It is one trading operation, but within that, we 20 have different products, different risks. 21 Therefore, the group is organized along those 22 risks. But it is really -- in the terminology of 23 a bank, it is one desk. 24 Q. OK. Does Mr. Yang report directly to 25 you?</p>	<p style="text-align: right;">Page 11</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. Yes, yes. Jasen reports directly to 3 me. 4 Q. Is it fair to say that you held this 5 same position during the week of September 15, 6 2008? 7 A. Yes. 8 Q. And -- 9 MR. STERN: I am just going to put out 10 the blank September 2008 calendar, just in 11 case Mr. King needs to reference it. 12 MR. HINE: That's a good idea. 13 A. It is fair to say that this group came 14 into existence or was derived from another group 15 which I ran in 2007 in a response to the crisis in 16 credit markets and mortgage-related assets. So 17 therefore, the group's character has changed in 18 response to those conditions over the two years, 19 or three years. I guess it is going on towards 20 three years now. 21 One of those things that prompted 22 change was the bankruptcy or seize of Lehman 23 itself. So we expanded the group in response to 24 the need to manage the substantial portfolio of 25 risks and assets which the bank had taken on as a</p>
<p style="text-align: right;">Page 12</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 result of that acquisition. So there is a slight 3 change in character immediately prior to and 4 immediately following the purchase. 5 Q. When you say that acquisition, you are 6 meaning the acquisition of Lehman assets? 7 A. The Lehman assets, yes. 8 Q. As you can probably expect, most of 9 this deposition is going to center around the week 10 of September 15. 11 A. Right. 12 Q. Could you give me just a general 13 description of your role in connection with the 14 Lehman acquisition during that week? 15 A. Yes. My -- we are a -- I forgot P is 16 principal and not portfolio. We are a principal 17 risk taking or risk managing unit, so -- and 18 essentially we were -- we manage or managed 19 illiquid risks, particularly difficult to trade 20 risks, particularly things like mortgages, 21 mortgage-backed securities. 22 So during this week and in the lead up 23 to the week, our job was -- my job was to 24 facilitate in gathering estimates as best as 25 possible in a very short period of time for the --</p>	<p style="text-align: right;">Page 13</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 for useful marks or valuations or prices for 3 various securities that were part of the various 4 different proposed purchase -- asset purchases, 5 and then the on boarding of this risk and then the 6 risk management of that risk. That was our 7 function. 8 Q. When you say illiquid risks or 9 illiquid assets, is there a separate unit within 10 Barclays that performs your function with respect 11 to more liquid assets? 12 A. No. A -- I mean I guess the answer 13 probably is yes, at some point. It may be it 14 would be Treasury or it would be something else in 15 the bank. For the most part, banks don't hold 16 large amounts of liquid risks, that trading 17 functions -- the reason this group was formed was 18 to deal with the fact that these are incredibly 19 difficult assets to dispose of. 20 Q. I understand. 21 A. And they trade, many of them trade by 22 appointment, meaning there is no exchange or 23 obvious market that you can easily trade the 24 assets. 25 So we all, we do use liquid</p>

<p style="text-align: right;">Page 14</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 instruments and liquid assets in the risk 3 management of these illiquid assets, so we trade 4 everything. But that's really the reason for the 5 existence of the business.</p> <p>6 Q. I understand. 7 Before we get into the week of 8 September 15, is your group separate and distinct 9 from something I see referred to as PCG?</p> <p>10 A. PCG is a control function. So 11 that's -- we are a trading group as opposed to 12 a -- so we work, I work for Eric Bommensath, who 13 works for Jerry in the business, if you like, as 14 opposed to product control, which is a control 15 function which reports up ultimately into Patrick.</p> <p>16 Q. Patrick Clarkson? 17 A. Yes. 18 Q. So just I'm trying to picture the 19 structure of Barclays. The PCG group reports 20 under his reporting line, not yours, correct? 21 A. PCG is a firm-wide function. It is 22 product control group, so it is a control 23 function. It deals with -- our interaction on a 24 daily basis with product control is to insure that 25 we have mandates to trade, that we are marking our</p>	<p style="text-align: right;">Page 15</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 books appropriately, that we are reporting 3 appropriately, and that all of the things that we 4 have to do on a normal basis are administered in 5 such a way that they can roll up into the firm's 6 books and records, et cetera, appropriately.</p> <p>7 Q. Can we talk specifically about the 8 week of September 15, and just to set some 9 parameters in case you are as bad with dates as I 10 am, September 15 is the date that Lehman Brothers 11 Holdings declared bankruptcy.</p> <p>12 Can I ask you this question first. 13 You are aware there was some discussions between 14 Barclays and Lehman prior to that filing of 15 bankruptcy?</p> <p>16 A. Yes, yes. 17 Q. Did you have any involvement in those 18 discussions? 19 A. Yes. 20 Q. Could you describe for me generally -- 21 and again we are talking about the weekend of, 22 say, the 12th, 13th and 14th of September, right? 23 A. Yes. 24 Q. Could you just describe for me 25 generally your role in those sessions?</p>
<p style="text-align: right;">Page 16</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. The same. 3 Q. Meaning -- 4 A. That we were provided a list of 5 securities and assets that were -- at least what 6 we understood were owned or held by -- the 14th is 7 prior to the bankruptcy -- up to the bankruptcy of 8 LBM, so that then we were looking at the assets of 9 Lehman Brothers in its entirety. 10 Q. OK. 11 A. And then -- and there, our function 12 was to look at just the mortgage-related assets of 13 the Lehman Brothers overall group. But the 14 function was then the same, so assess estimates of 15 value or prices for categories of assets, and we 16 never really got to the risk management stage, 17 obviously because no transaction occurred. 18 Q. When you say assess the category or -- 19 categories of assets, were you provided a list of 20 all the CUSIPs that Lehman held at the time or -- 21 A. We were provided various lists of 22 CUSIPs or other such descriptions of assets that 23 Lehman held. I mean in the lead up to the 14th, 24 it was -- because it was the whole Lehman entity, 25 there were other assets, too, that weren't</p>	<p style="text-align: right;">Page 17</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 securities. For example, loan portfolios in 3 Europe, so they didn't have CUSIPs. But we would 4 also attempt to assess some kind of price for 5 those based on some simple analysis. 6 Q. Your mandate during that period was 7 beyond just securities, it was any illiquid asset? 8 A. No. Then we were really strictly 9 mortgage or asset-backed type assets. There was 10 an overall coordination of many groups. At that 11 point there were many groups or many trading desks 12 at Barclays in Europe and the U.S. that were 13 attempting to assess the entire Lehman Brothers 14 balance sheet or list of securities and assets. 15 So we were then just one, we were focused on one 16 part of that. 17 Q. And did you come to New York to 18 participate in those discussions? 19 A. We are based in New York. 20 Q. So you participated in meetings with 21 Lehman folks during that weekend? 22 A. I don't know whether we did by that 23 weekend. That was really -- I thought that was -- 24 I thought in the lead up to that week, there was a 25 data room that was set up by Lehman. I never went</p>

<p style="text-align: right;">Page 18</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 to it actually, but one of the people that works 3 for me did. 4 I would have been at Lehman over the 5 weekend, but most of what we did was phone calls 6 to people and -- I mean in reality, there is a -- 7 it is a -- there were many, many -- this was a 8 phenomenally complex situation just because of the 9 number of line items. So in many respects, the 10 approach that we took to the analysis was high 11 level down rather than bottom up, meaning to have 12 accurately assessed the value of an individual 13 security by reference to talking to a trader when 14 there were then, say, 10,000 line items was less 15 useful than being able to initially categorize 16 things as residential mortgage-backed securities, 17 credit card securities, et cetera, et cetera, 18 subordinate, senior, and then have broad 19 valuations based on where we know similar markets 20 trade, and then each day we just refined. 21 Q. OK, I think I understood what you 22 said. When you said bottom up, you mean if you 23 had the luxury of time, you -- one might go CUSIP 24 by CUSIP or security by security and try to assess 25 the value of an individual security?</p>	<p style="text-align: right;">Page 19</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. Right, right. 3 Q. But you didn't have the luxury of 4 time. Is that what I hear you saying? 5 A. Luxury of time and even time -- then 6 markets are actually moving, so I would have to 7 be -- if you had infinite resources for a very 8 short period of time, then you might try to go 9 bottom up. 10 As -- once we had a definitive set -- 11 it was really -- so the first exercise was -- and 12 this was repeated as we went through the 15th, 13 through the various iterations of the asset 14 population, was one, do we have a complete 15 description of the population, can we categorize 16 the population, can we estimate valuations for the 17 categories within the population, can we refine 18 and improve those estimates, increasingly becoming 19 more granular. Have we engaged the appropriate 20 desks, trading desks within Barclays to -- or 21 existing Lehman desks, to provide us as much input 22 to where markets are or what securities -- what a 23 particular security is. 24 And then the last part was how do we 25 risk -- what is the risk associated with these</p>
<p style="text-align: right;">Page 20</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 categories of securities and how might we either 3 plan to dispose of the assets or in the short term 4 risk manage the assets. 5 Q. When you say risk manage, you mean 6 hedging? 7 A. For example, hedging, yeah. 8 Q. So the process you have described, is 9 it correct to say it started on the weekend of the 10 13th or 14th and then continued in some form 11 throughout the week of the 15th? 12 A. Yes. 13 Q. And how did it change -- well, as I 14 understand it, on the 14th, it was concluded that 15 there was no deal between Barclays and Lehman, 16 correct? 17 A. That's what I understand, yeah. 18 Q. And how did you learn that the talks 19 were going to start again? 20 A. I think it was at some point on the 21 15th or 16th, we were once again asked to look at 22 another population of assets that was a subset of 23 the population of assets that we had been looking 24 at the previous week. 25 Q. That was going to be my question. How</p>	<p style="text-align: right;">Page 21</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 did the population of assets change from the 3 weekend to the 15th? 4 A. It was now the assets of LBI or what 5 we thought were the assets of LBI as opposed to 6 the assets of, say, LB. Because there we were 7 looking at all assets regardless of whether they 8 were held by LBH or LBIE or -- so, but by that 9 point we knew we were just looking at or what we 10 thought we were looking at was the assets that 11 were included in the balance sheet for LBI. 12 Q. OK. Now, were you provided additional 13 information on the 15th or did you just use the 14 information you had previously acquired or -- 15 A. No, we -- I'm not sure -- we may have 16 been provided some of that information the 17 previous week. Again, because the scope of the 18 exercise had narrowed from the entire -- you know, 19 us participating in a small part of assessing the 20 overall assets of Lehman Brothers to a larger part 21 of a much -- a subset of that overall population, 22 which was now just the LBI assets. 23 In keeping with the process of 24 improved granularity of analysis as the population 25 shrunk or the -- we were able to look at a more</p>

<p style="text-align: right;">Page 22</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 refined list of assets on the 15th and spend more 3 time. But we definitely reused the -- where there 4 was overlap with analysis that we had done the 5 previous week, we definitely reused it. 6 Q. Let's start with this document. I 7 think -- well, during the -- now we are in the 8 week of the 15th, starting Monday. Ultimately 9 some kind of agreement was concluded between 10 Lehman and Barclays on the 16th, correct? 11 A. In relation to -- 12 Q. Well, an agreement was signed on the 13 16th. Are you aware of that? 14 MR. STERN: Objection to the form. 15 A. I don't -- 16 Q. Did you ever see what has been termed 17 the asset purchase agreement in connection with 18 the Lehman-Barclays transaction? 19 A. I have seen drafts of it. 20 Q. Were you involved in the -- I am just 21 trying to get a scope of what your involvement 22 was. Were you involved in the back and forth 23 negotiations as to the terms of the asset purchase 24 agreement? 25 A. No, no.</p>	<p style="text-align: right;">Page 23</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. In the course of your -- well, let me 3 get back to the 15th. On the 15th and 16th, did 4 you participate in meetings between Barclays and 5 Lehman? 6 A. I don't think so. I mean we may have 7 done on the 16th, but if it was, it was strictly 8 to do with identifying the -- you know, a trader 9 who may have been able to provide us clarity about 10 what a particular security was. But I think -- 11 but there wasn't an awful lot of that that we had 12 to do. 13 And it was very -- you know, we did 14 more of that in the previous week when we were 15 trying to understand what the asset population 16 was. That was really when we needed some 17 assistance with people from Lehman. 18 But on the 16th, around the 15th and 19 16th, the only thing I could think, we probably -- 20 there must have been some dialog, have we got a 21 list of securities to look at. So I would think 22 that we were sent lists, so if you wanted to 23 include e-mails sending us lists of securities, 24 I'm sure that yes, there is communication. 25 But communication in the sense of did</p>
<p style="text-align: right;">Page 24</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 we sit down and have conversations with people, 3 very, very limited. 4 Q. Well, I understand the providing of 5 information part of the discussion, but separate 6 from that, was there a back and forth as to the 7 valuation or marking of particular Lehman assets 8 that were the subject of the discussions? 9 A. I don't think so really. The -- on 10 the 15th and 16th. No. I think for the most part 11 the 15th and 16th was trying to establish have we 12 got -- these exercises are -- they take a lot of 13 effort. 14 Q. Sure. 15 A. And the reason why we were involved 16 was because we had some proficiency in dealing 17 with understanding new populations of securities 18 or assets, because that's what we had been doing 19 for the last year and a half. 20 So one thing that we -- one thing that 21 is critical is to insure that you are not spending 22 a tremendous amount of time working on things that 23 were irrelevant. So the first thing we need is to 24 be sure that we have got the correct population. 25 If we are spending time analyzing something that</p>	<p style="text-align: right;">Page 25</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 isn't going to be delivered, then we have 3 definitely wasted time. We are coming up with a 4 wrong valuation and we will never manage the 5 correct risk. 6 So I think mostly around the 15th and 7 16th would have been, well, OK, what are we 8 looking at this time? And of course during the 9 course of that week, and that's why -- you know, 10 my -- the only reason why I am vague as to exactly 11 what happened the 15th, 16th and 17th, is that it 12 changed so much so rapidly, that most of what was 13 happening on the 15th and 16th and almost all of 14 what we were looking at became redundant by some 15 time on the 16th, 17th or 18th. 16 MR. STERN: Let me just to clarify, I 17 take it you are focusing on what Mr. King's 18 role was and what he was involved in, and 19 when he uses the term "we," he is referring 20 to himself and his group as opposed to 21 Barclays as a whole. 22 THE WITNESS: That's absolutely 23 correct. 24 MR. HINE: I understand. I 25 understand.</p>

1 KING - HIGHLY-CONFIDENTIAL 2 Q. But, Mr. King, you folks didn't accept 3 the -- at face value the valuations or marks that 4 Lehman had put on various asset groups, did you? 5 A. No. 6 Q. Did you come to some conclusions about 7 the accuracy of Lehman's marks when you were 8 looking at all these asset groups? 9 A. It is a peculiar way to describe it, 10 did we come up with some assessment of the 11 accuracy of Lehman's marks. In some respects I 12 could say I didn't care about Lehman's marks. I 13 cared about what was a reasonable assessment for 14 the value of the assets and ultimately what was 15 the risk that we were going to have to manage. 16 If you think about the way a -- as a 17 trader would think, we received phone calls from 18 somebody saying I'd like you to buy -- would you 19 be interested in buying the following at a price 20 or 72. It is fascinating it is 72 they would like 21 to sell it to me at, but mostly I am interested in 22 where we would be interested in buying it, 55. 23 So can I therefore say ex post facto 24 that, you know, well, I have got some -- I didn't 25 think their offer of 72 was particularly accurate,	1 KING - HIGHLY-CONFIDENTIAL 2 that's an inadvertent output of the fact that we 3 wanted to bid it at 50-something. 4 Q. I think my question exhibited my 5 inexperience in this field, so I will try again. 6 Did you -- when you received the 7 information from Lehman, it had some kind of book 8 value ascribed to it by Lehman, correct? 9 A. Yes. 10 Q. Did you understand that by the time 11 Barclays and Lehman signed an agreement, that 12 there was going to be some kind of discount off of 13 that book value for the pool of assets that 14 Barclays was going to be acquiring? 15 A. The signing of the agreement on the 16 Tuesday that you have told me about? 17 Q. Yes, yes. 18 A. -- or later -- 19 Q. Yes. 20 A. I don't know much -- I don't really 21 know what agreement was reached on the 16th. All 22 I know is that there was some assets that we were 23 looking at. I would assume that it wouldn't have 24 been at all a surprise to anybody that a bid, even 25 a reasonable bid or reasonable assessment of a bid
1 KING - HIGHLY-CONFIDENTIAL 2 for small size would be at a discount to book 3 value if that's the valuation that you are 4 referring to. Book value being where it is held 5 in books and records. 6 Q. Well, I guess I understand your 7 answer, but do you have any recollection of 8 discussions during that period of time -- and 9 again I'm talking the 15th and 16th -- about 10 either discounting or reducing the values that 11 Lehman had ascribed to these pools of assets in 12 order to come to an agreement as to the pool of 13 assets or the marks for the pool of assets that 14 Barclays was going to acquire? 15 MR. STERN: This is you personally. 16 A. This is me personally. I have never 17 had any conversations with anybody at Lehman about 18 discounting Lehman's marks. It is definitely the 19 case that in the crudest -- if somebody said to 20 me, Stephen, here is a security, you don't know 21 what it is, but, you know, it is -- it has a 22 price -- the last time it traded it had a price of 23 50, let's say, mentally, I would say, well, I know 24 it is not -- I certainly wouldn't be bidding 50. 25 I would be bidding half of that or 20 percent of	1 KING - HIGHLY-CONFIDENTIAL 2 that or 80 percent of that or some number. 3 So it is definitely the case that when 4 we were trying to guess what might be a reasonable 5 value, in a very, very distressed market -- 6 Q. Sure. 7 A. A very, very distressed market for a 8 very, very substantial number of assets that 9 Barclays would want to be selling, and Barclays 10 didn't -- bear in mind, Barclays didn't want these 11 assets. The assets were -- you wouldn't want to 12 hold on to them. They consume capital. They need 13 to be funded. Funding was expensive, capital was 14 expensive. 15 The assets were part of, you know, a 16 deal, and therefore, they would -- and, you know, 17 the -- I avoided the word "hedging" when you used 18 hedging because hedging doesn't really -- hedging 19 still means there is a left-over risk. You never 20 really -- especially with assets like this. 21 Hedging is just, well, I have got one thing that 22 I'm short against something I am long. It is not 23 very well hedged, there is still a risk, and 24 that's why banks and hedge funds have had quite a 25 lot of difficulty in the last few months.

<p style="text-align: right;">Page 30</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 So we knew that the objective would be</p> <p>3 that we need to dispose of this risk. That was</p> <p>4 the objective. So if I was looking at a portfolio</p> <p>5 of assets, and you held the assets at 100, let's</p> <p>6 say, I'd say I don't know -- and I felt</p> <p>7 comfortable that I understand what the assets are,</p> <p>8 my bet is I couldn't sell those for more than</p> <p>9 80 cents of where you have currently ascribed a</p> <p>10 value to them.</p> <p>11 So yes, when we -- as a desk, the "we"</p> <p>12 meaning my group, one of the first things that we</p> <p>13 did was say, let's just assume that the stuff we</p> <p>14 don't know is at 50 percent of book value. The</p> <p>15 stuff that is exchange traded equities is at</p> <p>16 95 percent of where it is, because that was a --</p> <p>17 the crudest form of guess.</p> <p>18 Q. Is that the type of analysis you were</p> <p>19 doing on the 15th and 16th when you described -- I</p> <p>20 think you previously talked about a top-down</p> <p>21 approach as opposed to bottom up?</p> <p>22 A. Yes. Because you do that -- really if</p> <p>23 you think about it, you repeatedly do that same</p> <p>24 process at an ever-more granular level. Even if</p> <p>25 you got down to an individual security, a trader</p>	<p style="text-align: right;">Page 31</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 would say I've projected -- the thing about some</p> <p>3 of these securities and assets is, unlike -- not</p> <p>4 all of them but some of them, and certainly the</p> <p>5 ones that we would have been looking at at this</p> <p>6 time, they are not -- even though many of them are</p> <p>7 called fixed income or debt instruments, the</p> <p>8 amount of cash that they would be expected to</p> <p>9 ultimately pay is actually uncertain, either</p> <p>10 because there is a lot of risk associated with the</p> <p>11 borrower or there is a prepayment risk or there is</p> <p>12 something that makes the cash flow uncertain.</p> <p>13 So the way a trader would look at it</p> <p>14 is to say, I'll make a -- I'll form a view of how</p> <p>15 much cash that I would want -- that I expect to</p> <p>16 receive on this security, and then I would want to</p> <p>17 discount the amount of cash back to some price</p> <p>18 that I felt that I was earning an appropriate</p> <p>19 yield on. And then when a trader was then</p> <p>20 subsequently bidding, they then may provide --</p> <p>21 say, actually I'll bid 80 percent of that.</p> <p>22 So whether it is at the portfolio</p> <p>23 level, when we are looking at a whole balance</p> <p>24 sheet, or an individual CUSIP, in many respects</p> <p>25 the process is the same. It is about how</p>
<p style="text-align: right;">Page 32</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 confident you can be that you have assessed</p> <p>3 everything correctly, because there is so much</p> <p>4 uncertainty.</p> <p>5 Q. I think I understand that.</p> <p>6 So during this early stage now, the</p> <p>7 15th and 16th, is it correct to say you're looking</p> <p>8 at particular asset classes or groups of assets by</p> <p>9 type and performing this type of analysis on them?</p> <p>10 A. Yes, yes.</p> <p>11 Q. And so certain groups of assets, you</p> <p>12 would be willing to pay a higher percent than</p> <p>13 other groups, right, or --</p> <p>14 A. Yeah. Because to reflect the idea</p> <p>15 that the uncertainty about the price or the cash</p> <p>16 flows was more or less clear.</p> <p>17 Q. So were there particular assets or</p> <p>18 groups of assets within the Lehman portfolio that</p> <p>19 was supposed to be sold to Barclays that warranted</p> <p>20 much deeper discounts than others?</p> <p>21 A. Yes.</p> <p>22 Q. And which were the most discounted --</p> <p>23 or which groups would require the most discount</p> <p>24 from your perspective?</p> <p>25 A. The assets that are the typical assets</p>	<p style="text-align: right;">Page 33</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 that my group manages, which is things like</p> <p>3 mortgage-backed securities, deeply distressed</p> <p>4 credit securities, things for which there is a</p> <p>5 very, very limited market and poor visibility on</p> <p>6 the expected cash flows.</p> <p>7 Q. And what kind of discounts would those</p> <p>8 groups of assets get during this week?</p> <p>9 A. To what?</p> <p>10 Q. I don't know, did you -- again,</p> <p>11 talking about the 15th and 16th, did you say --</p> <p>12 again, I might be showing my ignorance here --</p> <p>13 here is a pool of mortgage-backed security, a lot</p> <p>14 of uncertainty here, let's mark their -- let's</p> <p>15 discount their marks down by, say, 50 percent?</p> <p>16 A. Right.</p> <p>17 Q. You did.</p> <p>18 A. Yes.</p> <p>19 Q. OK. And then other, presumably other</p> <p>20 categories more secure, more visible -- again, I</p> <p>21 might be displaying my ignorance, but perhaps</p> <p>22 government securities might warrant a much smaller</p> <p>23 discount in the mark?</p> <p>24 A. Precisely.</p> <p>25 Q. Is that right?</p>

<p style="text-align: right;">Page 34</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. Precisely. 3 (Exhibit 388-B, document Bates stamped 4 BCI-EX-S 74256 through 257 marked for 5 identification, as of this date.) 6 Q. Mr. King, I am handing you a copy of a 7 document marked as 388-B, which is a two-page 8 document with Bates numbers BCI-EX-S 00074256 9 through 257. 10 After you have had a minute to look at 11 it, let me know, and I have a question or two 12 about it. 13 A. OK. 14 Q. Have you had a chance to look at the 15 document? 16 A. Yeah. 17 Q. Have you ever seen this document 18 before? 19 A. Yes. 20 Q. When? 21 A. I remember -- this actually is, I 22 think this is my handwriting on it, and I also saw 23 it yesterday. 24 Q. When you say "my handwriting on it," 25 you are referring to the second page of the</p>	<p style="text-align: right;">Page 35</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 document? 3 A. Yes, yes. Sorry, I thought you were 4 suggesting that I look at both pages. 5 Q. Yes, yes, I was. 6 And is it fair to assume that this 7 document was sent to you on the 17th by Mr. Yang? 8 A. Well, I would have seen this document 9 before the 17th. He is sending it to James 10 Walker. He just happens to be copying me. 11 Q. Let me distinguish, when you say "this 12 document," the covering e-mail is on the 17th, but 13 the second page, you have seen that before the 14 17th? 15 A. Yes. 16 Q. Can you tell me when you first saw 17 that, the second page? 18 A. I saw -- I think I saw a hard copy of 19 this at some point -- was this -- yeah. This is 20 an e-mail and this is a hard copy, so I don't 21 quite know how -- whether Jasen had scanned it or 22 how the two became connected, but we had seen -- 23 can I ask that? Is that -- 24 Q. Well, this is how it was produced. It 25 doesn't really matter about the -- where Mr. Yang</p>
<p style="text-align: right;">Page 36</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 got it, so I'm not going to ask you about that. I 3 just want to focus on the second page of this 4 document. 5 A. I'd seen this in hard copy, which is 6 why I have scribbled on it at some point after 7 the -- after the 12th. It was produced on the 8 12th. 9 Q. This was produced by Lehman to 10 Barclays on the 12th? 11 A. That's what it says on the top 12 left-hand corner of the second page, Lehman 13 Brothers balance sheet by GAAP asset type 9/12. 14 So I couldn't have seen it before the 12th, but I 15 must have seen it at some point thereafter, but 16 I'm not exactly sure when. 17 Q. You believe you saw it over that 18 weekend at some point? 19 A. I had seen it during the weekend. I 20 might have seen it during the weekend, but that 21 was in the old -- that was in the first iteration 22 of the potential acquisition. 23 So I don't know when I saw it. All I 24 know is I definitely saw it before he sent it to 25 James Walker.</p>	<p style="text-align: right;">Page 37</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. I guess that was my question. Was 3 this part of your analysis or discussion over the 4 weekend for the first iteration, or did you -- 5 A. I don't remember. 6 Q. Or did you use it in connection with 7 the second iteration on, say, the 15th and 16th? 8 A. I can confirm the latter part. I 9 don't remember the former. We might have seen it 10 in relation to the first part, but then it is only 11 a subset. I don't really know why -- in the first 12 iteration of the transaction, where it was buying 13 Lehman, we never really had thought about Lehman 14 as being multiple entities. So looking at LBI 15 specifically prior to Sunday would have been 16 something I wouldn't have focused on. 17 So I don't think I looked at it at the 18 weekend. I would think I looked at it on the 19 Monday or Tuesday when we were told here is the 20 next iteration of the transaction. 21 Q. OK, OK. And you are referring to the 22 Lehman Brothers, Inc. at the top of this document? 23 A. Yes. This is Lehman Brothers, Inc., 24 as opposed to Lehman Brothers. But up to the 25 Sunday, we were thinking Lehman Brothers. So the</p>

<p style="text-align: right;">Page 38</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 first thing I would have asked if somebody sent me 3 this is, to my point about population, am I 4 looking at everything, because otherwise this is 5 redundant. 6 Whereas on the Monday, if someone said 7 we are now looking at LBI, I can say is it correct 8 that this is the population of what we are 9 supposed to look at, and someone could say yes, 10 and that would make sense. Now we have got 11 something to work on. 12 So I would think I saw this on the -- 13 and also, by the way, these things, even though 14 they say 9/12, typically it would take 24 to 48 15 hours at least for somebody to produce this. 16 Q. OK. 17 A. So I very much doubt this -- although 18 it is of the 12th, the 12th is close of business 19 on the Friday, which means it almost certainly 20 didn't exist until something like the Sunday, and 21 I would think it was shown to us on the Monday or 22 Tuesday. 23 Q. OK, fair enough. 24 Do you recall what you were -- I see a 25 lot of handwriting and a lot of numbers. Do these</p>	<p style="text-align: right;">Page 39</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 refresh your recollection about what you were 3 analyzing? 4 A. No. These are sort of typical 5 scribble from me. The e-mail is -- the e-mail 6 covering is quite elucidating because it 7 highlights -- the fact that it is a physical -- 8 one of the problems we had at that time was this 9 is a physical. There also was -- I remember that 10 there was -- and I don't have this, but there was 11 a paper copy again of securities that -- these 12 numbers are produced by Lehman's systems. So 13 there would have been line items of all the 14 individual securities that fed up into these 15 numbers. 16 What Jasen is highlighting on the 17 front is that we have obviously by the 17th, this 18 definitely would have been the case as well, 19 started to receive files, which would have been 20 Excel files, I would think, and what he is 21 starting to explain is, all right, we have started 22 to try to understand what is the population that 23 leads to this. If this is what we are buying, is 24 the assets that are currently on -- the assets 25 that are currently on LBI's balance sheet, his</p>
<p style="text-align: right;">Page 40</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 e-mail explains that we have started to get files 3 that should be all of this, but they don't tie 4 out. 5 He actually points out, you know, 6 corporate obligations, corporate stocks do not tie 7 out to the summary. So we have been sent files 8 that purport to be the same but that don't tie 9 out. 10 Q. So tie out in your understanding means 11 he is trying to compare the files of individual 12 securities with the line item in the -- on this 13 balance sheet and see that they add up to that 14 total? 15 A. Exactly right. So he would have had 16 something that says total corporate obligations 17 and spot total, let's say. If he would have been 18 sent a file that also purports to be corporate 19 obligations and let's say included then the line 20 items, a notional or a price, so he could 21 calculate a mark, add the marks up, he ought to 22 get back to that number, and his e-mail indicates 23 that they don't. 24 Q. His e-mail is trying to, as you said, 25 get the proper population of the securities in</p>	<p style="text-align: right;">Page 41</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 each group? 3 A. Yeah. And you see, as you say -- my 4 sentence is that I have asked Jasen to send this 5 to James, because I thought I'd seen something 6 that looked similar to it that might help us to be 7 able to find out. Because with this, there is 8 almost -- again there is almost nothing you could 9 do. You would say -- using the percentage 10 approach, you would have to just take very heavy 11 haircuts to these large numbers and say I don't 12 really know what is behind this. 13 Then on his e-mail he is saying, we 14 have got some stuff but it doesn't tie out to 15 those numbers, and furthermore, we don't have 16 listings for derivatives category. We are able to 17 tie out the asset listings we were given on 18 Monday. We were given some asset listings on 19 Monday, so he is showing on Monday there were some 20 files. 21 And then the last sentence is pretty 22 interesting because it highlights the fact that 23 the problem wasn't a static problem. It was a 24 dynamic problem. So he has a list of securities, 25 but he says the government and agencies book is --</p>

<p style="text-align: right;">Page 42</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 although we understand from Clement Bernard that 3 the government and agencies book is shrinking as 4 trades are unwound. 5 The problem here was the 6 counterparties to Lehman were terminating their 7 trades. So we all have now realized that although 8 Lehman was sending us populations, minute by 9 minute, counterparties to Lehman were terminating 10 trades. Therefore, this population is changing. 11 Q. I understand. 12 A. And this was only supposedly as of the 13 12th, which is the Friday. So by the 17th, the 14 probability that these securities still were on or 15 available to LBI was low. 16 Q. OK. Thank you for that. 17 I would like to step back to before 18 the Wednesday, back to the Monday when you're 19 somehow using this document in connection with 20 your assessment of the Lehman assets. Are 21 these -- if you look on the left-hand column, it 22 has "GAAP asset class." Do you see that? 23 A. Yes. 24 Q. And then it has six different asset 25 classes listed. Are these the -- are these asset</p>	<p style="text-align: right;">Page 43</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 classes that fell within your purview in the 3 principal mortgage trading group as groups of 4 assets that you were asked to look at? 5 A. Not on -- not at this time. 6 Q. Not on the 15th or 16th? 7 A. No. We were -- the assets that we 8 were looking at were the -- it was starting to be 9 the case around the 15th and 16th that I had -- I, 10 we, my group, had two hats that we were wearing. 11 One was to look specifically to end up as the 12 ultimate risk -- actually that's not true, not to 13 end up as the ultimate risk manager, but to assess 14 the value of specific instruments. Here the line 15 item in here that would say total mortgage or 16 mortgage-backed total, the 6 and a half billion. 17 So that is a category that my group would have 18 expected to -- or be capable of risk managing. 19 Q. Right. 20 A. That's one hat. 21 There is a second hat that we were 22 starting to wear, which was to facilitate in the 23 coordination and aggregation of the opinions of 24 other expert desks within Barclays on the other 25 line items. So, for example, total government and</p>
<p style="text-align: right;">Page 44</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 agencies securities, governments and agencies are 3 traded by a -- you know, there is a desk at 4 Barclays that trades governments and agencies. 5 Q. Is that desk outside your principal 6 mortgage trading group? 7 A. Yes, yes. It is in Eric's world, but 8 it is a trading desk. 9 Q. Eric who? 10 A. Eric Bommensath, my boss. It is a 11 trading desk, a customer trading desk, and we 12 would have no -- my desk would have no advantage 13 in providing a practical assessment of whether -- 14 of what the valuation pricing or risk management 15 issues were associated with 39 billion dollars 16 worth of governments and agencies. 17 But with the hat of coordinating, we 18 were starting around the 15th or 16th to 19 facilitate in coordinating and aggregating that 20 information. 21 Q. So can I just see if I understand what 22 you said. 23 Your group, the principal mortgage 24 trading group would have -- were provided the 25 assessment, if you will, as to the total mortgage</p>	<p style="text-align: right;">Page 45</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 and total -- and mortgage-backed securities line 3 item, but as to the other five line items here you 4 would have acted as facilitator? 5 A. Correct. 6 Q. Assembling the assessments of other 7 groups within Barclays? 8 A. Correct. 9 Q. After you assembled those, presumably 10 that enters into the negotiations between Lehman 11 and Barclays in some way? 12 A. Then I would have provided an 13 assessment to somebody as to where the current 14 estimate for the cumulative value in our view of 15 value was for this portfolio and particular 16 categories. 17 Q. Who did you provide that to? 18 A. I don't remember. It might have been 19 a variety of people. It could have been to -- it 20 would have been at various times to Patrick or to 21 Mike or to whoever was asking me for it at that 22 moment, James Walker, whoever. Some various 23 people at various times asked for an assessment of 24 value for different purposes, and we would provide 25 it.</p>

<p style="text-align: right;">Page 46</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Now, are you talking about people 3 within Barclays or are you talking -- in other 4 words, here is my -- my confusion here is this: 5 Are you engaged in any kind of one-on-one 6 conversations between Lehman as to the types of 7 discounts we might apply to these different 8 groups?</p> <p>9 A. No.</p> <p>10 Q. Or are you just providing it to other 11 people within Barclays?</p> <p>12 A. Other people within Barclays.</p> <p>13 Q. Do you recall the conclusions you 14 reached on the 15th or 16th about these particular 15 asset types as far as the amount of discount that 16 would be required?</p> <p>17 A. Not particularly. I remember that 18 the -- I remember that the mortgage securities, 19 for example, we carried around -- we had just said 20 I would -- I don't think -- I would be -- I think 21 we used something like 50 percent for the mortgage 22 securities, for example.</p> <p>23 Q. OK. OK. Do you recall what you used 24 for the other categories, any of the other 25 categories?</p>	<p style="text-align: right;">Page 47</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Is it fair to say, as I think we 4 previously discussed for the less risky or more, I 5 think you used the word visible categories, you 6 would use a smaller discount than the 50 percent?</p> <p>7 A. Yes. And that's an interesting thing, 8 because I remember actually that one of the 9 categories here, total government and agencies, I 10 remember thinking -- I think you can sort of see 11 in some of the scribble here as well, for example, 12 the 3.2, I could see a number 3.2 here, which I 13 would guess is half of the 6.5 billion or the half 14 that we were saying that -- one of the problems 15 with that category in particular was that we 16 didn't even know what some of the securities were. 17 They were just -- you know, because if you look at 18 a CUSIP, a CUSIP doesn't tell you anything. You 19 have to get a description to go with a CUSIP.</p> <p>20 Q. When you say "that category," talking 21 about mortgage backed?</p> <p>22 A. Mortgage backed. Unfortunately banks 23 have a tendency of using mortgage and 24 mortgage-backed securities to mean anything that 25 isn't obviously something else. So it isn't just</p>
<p style="text-align: right;">Page 48</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 mortgages. It is CDOs, it is manufactured 3 housing, it is franchise loans. It is a lot of 4 stuff. Because you notice it doesn't obviously 5 fit into any of those other categories, so it is 6 stuff.</p> <p>7 Because it is stuff, some of it you 8 would have no idea from the CUSIP or even the 9 description whether it was a performing or 10 nonperforming security, a senior obligation or a 11 junior obligation. You would actually have to go 12 to Bloomberg, or if in some cases it wasn't listed 13 on Bloomberg, go to a trader and say what is this.</p> <p>14 Some of these, for example, were what 15 they call whole business securitizations, which 16 are secured lendings against assets of corporates. 17 And there you would have to understand something 18 about the company.</p> <p>19 Q. So in the end, because of all these 20 uncertainties, you ascribed a 50 percent discount 21 rate to that line item?</p> <p>22 A. If someone said -- yeah. But for a -- 23 if I was asked for an initial guess, a guess, I 24 would say, you know, I can't imagine that -- if 25 you turned around and asked somebody for a bid of</p>	<p style="text-align: right;">Page 49</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 6 and a half billion dollars -- these securities 3 for example, mortgage and mortgage-backed 4 securities, they trade in -- they have -- many of 5 them have face values, notional of millions of 6 dollars. Single numbers of millions of dollars. 7 So you can see that 6 and a half billion dollars 8 of assets is thousands of line items.</p> <p>9 Furthermore, many of them will trade 10 at a few cents on the dollar, 5, 10, 3, 20. So 11 there is a tremendous level of uncertainty and 12 inaccuracy about it. And the 6 and a half billion 13 dollars of assets, to sell 6 and a half billion 14 dollars of assets would take a tremendous amount 15 of time. Actually, it did ultimately take the 16 better part of a year.</p> <p>17 So therefore, to just guess, I can't 18 believe that if they are marked there, that if you 19 needed to sell them or you wanted to bid them, 20 that you would bid more than 50 cents on the 21 dollar, would have been a guess.</p> <p>22 Now, remember, subsequently we did 23 some work on it and came up with similar sort of 24 numbers on it, which is why I happen to remember 25 that one.</p>

1 KING - HIGHLY-CONFIDENTIAL 2 Q. That's the one that is within your 3 group? 4 A. That's the one within the group. 5 Interesting thing, the government and agencies 6 securities, 39 billion, I remember on -- at around 7 this time on the 15th and 16th, I had a pretty 8 rosy view of the liquidity of government 9 securities and agencies, mostly because I was 10 pretty ignorant of what they were. Of course 11 because of the collapse of Lehman in the previous 12 two days, there was no liquidity in these either. 13 So these agency securities turned out 14 to be some of the hardest securities to sell 15 subsequently. There was a -- there wasn't 16 39 billion dollars of them, but there was a 17 significant population of agencies securities that 18 were in the Fed repo facility. 19 They took nine months to sell at a 20 significant discount, much more than I would have 21 ever guessed on that day, because I would have 22 thought they were liquid. There were no liquid 23 markets at this point. 24 MR. STERN: Bill, could we take a 25 brief break?	Page 50 1 KING - HIGHLY-CONFIDENTIAL 2 MR. HINE: Sure, sure. 3 (Recess) 4 BY MR. HINE: 5 Q. Mr. King, I would like to continue 6 with the second page of Exhibit 388-B, if you 7 will. On the right-hand side of the balance sheet 8 it's entitled "Net Short Inventory." Do you see 9 that? 10 A. Um-hm. 11 Q. Was this side of the balance sheet 12 something that you worked on in connection with 13 these transactions, or is that someone else at 14 Barclays? 15 A. No. There were -- it was one of the 16 things that -- they weren't really separable 17 because the longs and shorts obviously were 18 supposedly interrelated. And you can see that -- 19 it kind of highlights as well that something like 20 the mortgage or mortgage-backed pool, if you will 21 notice, is -- there are very few in the way of 22 shorts against that because it is not written -- 23 it is not a -- something that is hedgeable that 24 you would expect to have two directional markets. 25 People buy stuff, therefore they are long,
1 KING - HIGHLY-CONFIDENTIAL 2 therefore all of the asset -- there is assets and 3 there is no liabilities. 4 Whereas something like government and 5 agencies is an active two-way market, people 6 borrow and sell. You can borrow securities and 7 you can sell them, so there would be shorts. 8 Likewise, you know, corporate equities and stocks, 9 et cetera. Again, nonmoney market instruments and 10 CDs, there is no way to short them. 11 Q. So is it fair to say with respect to 12 the right side of this balance sheet, you 13 performed the same function you previously 14 described, assembling assessments for the first 15 five line items, and supervising your group and 16 providing assessments for the last line item? 17 A. That's correct. And as you see, there 18 is really nothing there. So really it would have 19 been that we would have provided the list of longs 20 and shorts in files and sent them to the 21 respective desks. 22 And as Jasen says, of course, in 23 reality -- therefore, I can't really comment much 24 on those values because there are -- there is 25 almost nothing that's relevant to the work that my	Page 52 1 KING - HIGHLY-CONFIDENTIAL 2 group was doing for itself for the last line item. 3 As Jasen's e-mail on the front says, the shorts 4 were evaporating as people closed out trades -- 5 bad choice of words I suppose. They were 6 disappearing as people actually closed out trades 7 against Lehman, and within 24 hours of this 8 Wednesday, I think they became irrelevant. So 9 there is very little work that was done on that 10 right-hand side. 11 Q. I understand. 12 I think you said earlier that you were 13 not engaged in one-on-one discussions with Lehman 14 about the valuations of these different groups of 15 assets? 16 A. Correct. 17 Q. Was there someone at Barclays who was 18 so engaged? 19 A. I don't know. 20 Q. You don't know. OK. 21 Before we leave this sheet, can I ask 22 for a translation on some of your handwriting. 23 The phrase says 3.8 and there's a text. Do you 24 see that? 25 A. Yeah.

1 KING - HIGHLY-CONFIDENTIAL 2 Q. Do you know what that says? 3 A. It is 3.8 mortgage -- I guess that 4 says mortgage backs 400 million dollars HELOCs, 5 and I don't know what the last thing would be. 6 But it -- I don't know whether -- 3.8 may not even 7 be related to the scribble to the right. That 8 says morg back, mortgage backs, 400 million 9 dollars of HELOCs and -- ah, it's seconds. HELOCs 10 and seconds. 11 So, for example, the HELOCs and second 12 liens are -- people are much more familiar with 13 the descriptions of various types of mortgage 14 products than they were a few years ago, but 15 HELOCs and second liens are obviously the 16 subordinate consumer credit attached to their real 17 estate. 18 So those have -- largely are viewed as 19 worthless, so I'm making reference that somewhere 20 in that 6.556 is 400 million dollars of something 21 that is worthless. I don't remember, I have no 22 recollection as to whether the 400 million dollars 23 was a notional or market value, but it may well 24 have been that I was just noting that there was 25 400 million dollars of market value attributed to	Page 54 1 KING - HIGHLY-CONFIDENTIAL 2 second liens and HELOCs, which I would have just 3 written off. 4 Q. Do you see below that has a 5 calculation? It looks like it says 61.5 minus 6 57.9 equals, I assume that says 3.6. Do you see 7 that? 8 A. Yes. 9 Q. Do you recall what that calculation 10 related to? 11 A. No, it's -- I am sure that -- I do 12 know what it -- it will have been something to do 13 with what we were discussing about, you know, 14 estimating how bad that 65 billion dollars -- what 15 that 65 billion dollars might be worth. But I 16 don't remember the calculation. It was one of -- 17 Q. No specific recollection? 18 A. No. It was one of -- it is 19 incomplete, as you can see. 20 Q. Right. 21 Mr. King, I am handing you a document 22 that has previously been marked as Exhibit 19. If 23 you might take a minute and take a look at it. My 24 question is going to be do you recognize that 25 document.
Page 56 1 KING - HIGHLY-CONFIDENTIAL 2 A. Only because I was shown it yesterday. 3 Q. OK. Other than your preparation for 4 today's deposition, had you ever seen that 5 document before? 6 A. I don't think so. 7 Q. Are you -- again -- let's -- we had 8 previously been talking about a balance sheet from 9 the 12th for LBI. Were there any iterations of a 10 balance sheet presented in your discussions during 11 the 15th and 16th? 12 A. I don't think so. 13 Q. Any revisions to what we have 14 previously talked about as Exhibit 388-B? 15 A. I don't think so. 16 Q. So if there was, you don't recall 17 seeing them? 18 A. No. If they -- you know, and as you 19 said, sort of towards the -- sometime between the 20 16th and 18th, our focus changed totally to the 21 securities that were just in the Fed facility. So 22 it is possible that during that period, something 23 was sent to me that was a revision, but we 24 wouldn't have been paying attention to it. 25 Q. OK. Back to Exhibit 19. That's the	Page 56 1 KING - HIGHLY-CONFIDENTIAL 2 second document. Do you have any understanding of 3 how this balance sheet is related at all to the 4 asset purchase agreement between Lehman and 5 Barclays? 6 A. Not directly. 7 Q. Do you have any general understanding? 8 A. No. It would all be -- you know, it 9 would all be supposition of stuff that I saw 10 subsequently that meant I could work out what this 11 is as opposed to me ever seeing this or seeing how 12 it was included. 13 Q. Do you have any recollection -- you 14 see the number at the bottom, total assets, 72.65? 15 Do you see that? 16 A. Yeah. 17 Q. Do you have any understanding of how 18 Lehman and Barclays came to agree on that number? 19 MR. STERN: Objection. 20 Q. As to the asset purchase agreement? 21 MR. STERN: Objection to the form. 22 A. No, I don't think so. I mean I can -- 23 I can look at the -- I mean if I look at the -- 24 again, as I say, I would be -- I would be working 25 this out now, but I could recognize that some of

<p style="text-align: right;">Page 58</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 the numbers that are on the asset side of the -- I 3 mean it was quite interesting actually that what 4 you can see on the asset side of the balance 5 sheet, that there are some numbers that are 6 similar to the numbers on the right hand -- on 7 here. So, for example -- 8 Q. When you say "here," you are pointing 9 to -- 10 A. Sorry. 11 Q. -- Exhibit 388-B? 12 A. I don't know how to define it. This 13 page. 14 MR. STERN: I will define it. It is 15 the second page of Exhibit 388-B. 16 Q. For the purposes of the reporter, when 17 you say "this," we have to identify documents. 18 A. I understand that. Second page of 19 388-B. 20 Q. I apologize, I interrupted you. 21 A. For example, I could see that some 22 numbers would look familiar on the one, which is 23 the commercial paper 1.1 appears to be roughly 24 total CDs and other money market instruments. 25 That would be -- I would think that's the same</p>	<p style="text-align: right;">Page 59</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 number. 3 MR. STERN: So Mr. King is pointing 4 first to Exhibit 19 and then he is pointing 5 to the second page of Exhibit 388-B. 6 A. Right. So this -- there are some 7 numbers that are on both pages or approximately on 8 both pages, the 40 billion dollars of government 9 and agencies, the 39.173 on the second page of 10 388-B. 11 Q. Right. 12 A. I vaguely remember the 2.7 billion in 13 mortgages, which is the reduced -- the assumed 14 number -- there was some -- there was only a 15 subset of -- at some point, there was an iteration 16 of discussions which -- that there would be some 17 but not all of these assets that were included 18 in -- that we would be receiving, and it was only 19 roughly half or something like that of the 20 mortgage and mortgage-backed securities. And I 21 think that's where that 2.7 number comes from, 22 which is why mortgage is 2.7 versus the 6.56. 23 And again, you can see the 4.5 of 24 derivatives is approximately the 4.83, et cetera. 25 I don't remember the cash number.</p>
<p style="text-align: right;">Page 60</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 The interesting thing as well on the 3 liability side, I'm assuming this is -- because 4 this is done as a related date, you can see the 5 attrition of the liabilities, that they were 6 closed out. You had 35 billion dollars of 7 liabilities on the 12th, but on this one, which is 8 dated -- is that the date it was produced, 9/16? 9 Q. That's what I understand. 10 A. I don't know if that number has 11 declined. 12 Q. I see the correlation you are drawing 13 between the two documents -- 14 A. But I am doing that now. 15 Q. That was going to be my question. Did 16 you have any participation or understanding or 17 knowledge about the process on the 15th and 16th 18 by which Exhibit 19 was prepared? 19 A. No. Other than my giving numbers on 20 request to people at Barclays that must have in 21 some way been used to produce this, but we weren't 22 involved in the production. 23 Q. OK. And so -- 24 A. Or in the use of it. 25 Q. So you're providing your assessments</p>	<p style="text-align: right;">Page 61</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 or your data to someone else at Barclays who's 3 involved in the discussions with Lehman, correct? 4 That's what we talked about earlier? 5 A. Yes. 6 Q. Do you see on Exhibit 19, you have the 7 upper part of the asset side of the sheet, which 8 we have just talked about, but below that is 9 something called collateralized STAGR? Do you see 10 that? 11 A. Yes. 12 Q. Do you know what that is? 13 A. Which one? The one on the left or the 14 right? 15 Q. On the left, it's -- well, there are 16 two entries. On the left there is a 17 collateralized STAGR. Do you see that? 18 A. Yeah. 19 Q. And on the right hand, the liability 20 side, it's collateralized ST fund. Do you have an 21 understanding of what that is? 22 MR. STERN: Objection to the form. If 23 you are asking what his general 24 understanding is, fine. 25 MR. HINE: That's what I am asking.</p>

<p style="text-align: right;">Page 62</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 MR. STERN: OK. 3 A. No. I would -- I would -- I know the 4 word "collateralized." I would guess ST is short 5 term, but I wouldn't know. 6 Q. Just to understand your role on the 7 15th and 16th, is it correct to say that you were 8 not involved in providing any kind of assessments 9 relating to something called a collateralized 10 short-term agreement or fund? Is that right? 11 MR. STERN: Objection to the form. 12 You can answer. 13 A. Yeah, no. This -- it is work on the 14 assets behind -- 15 MR. STERN: The second page. 16 A. The second page of 388-B that we were 17 working on. 18 Q. I think I just have a glitch in the 19 record here. It is correct to say that you did 20 not have any -- do any work in connection with 21 something called collateralized ST assets, right? 22 A. No, I don't think so. I don't think 23 so, no. 24 Q. OK. Now, I have seen in our 25 production several different iterations of</p>	<p style="text-align: right;">Page 63</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Exhibit 19. Have you ever seen any earlier 3 versions of that document that you recall? 4 A. I don't think so, no. 5 Q. Do you have any understanding -- do 6 you have any knowledge at the time or any 7 understanding of -- I might have asked this 8 already, I apologize, but the 72.65 number at the 9 bottom, do you have any understanding or knowledge 10 back on the 15th or 16th about discussions between 11 Lehman and Barclays concerning that number? 12 A. No. 13 Q. How about a 70 billion dollar number? 14 A. No. 15 Q. Just to save use of an exhibit here, 16 in the asset purchase agreement, there is an entry 17 of 70 billion dollars relating to long positions. 18 A. Right. 19 Q. Do you have any understanding of that 20 or have you ever heard of that before? 21 MR. STERN: Objection to the form. 22 You can answer it. 23 Q. Let me -- 24 A. No. I mean, as I say, I can -- I know 25 enough about corporate financial structure to know</p>
<p style="text-align: right;">Page 64</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 what you are talking about and therefore deduce 3 what you mean, but no, our involvement was to try 4 and assess the value of assets that were feeding 5 into presumably the production of this. 6 Q. I understand. I'm not trying to get 7 your surmise or conjecture. I am trying to 8 understand if you have any recollection of how a 9 70 billion dollar number came to be, appear on the 10 asset purchase agreement in connection with 11 Lehman's long positions. 12 MR. STERN: Is there a question? I 13 don't think there is a question. 14 Q. Well, what do you -- do you have any 15 recollection of how that came to be? 16 A. No. As I say, I mean the fact that 17 there are -- whether this number or any other 18 subsequent number or previous number, it doesn't 19 surprise me particularly that there is -- that 20 there are iterations of this, because, as Jasen's 21 e-mail points out, things change, were changing by 22 the minute. But how it was produced and who 23 produced it, that wasn't -- that wasn't for us to 24 provide. 25 In fact, it doesn't look like any</p>	<p style="text-align: right;">Page 65</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 particular -- if there is any relationship between 3 Exhibit 19 and the assets that are described in 4 page 2 of 388-B, then there doesn't seem to be any 5 particular discount or revaluation in them. 6 So I'm not even sure whether we 7 were -- I don't know whether anything that we were 8 doing was feeding into this page. 9 Q. The number dropped from 65 billion to 10 62.7, correct? 11 MR. STERN: Objection to the form. 12 A. Well, I don't know whether the number 13 dropped from 62, but I can see that mortgages is 14 reported on this -- one thing I do know is that 15 there was a discussion that only a subset of the 16 mortgage or mortgage-backed securities portfolio, 17 which as I described wasn't just mortgages and 18 mortgage backed, it was asset backs, that not all 19 of them -- we didn't want all of them. 20 Q. I understand. 21 A. And so the reason I can at least see 22 for the 2.7 of mortgages is probably that it 23 doesn't include the entire population. So I can 24 see that one, but I don't know -- but I don't 25 really know the transformation from the 62.7 to</p>

<p style="text-align: right;">Page 66</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 the 65.115, whether they are even based on the 3 same date, same populations. But I do remember 4 that fact about the mortgage and mortgage-backed 5 part.</p> <p>6 MR. STERN: And that's independent of 7 Exhibit 19?</p> <p>8 A. Yes. You can't derive that from -- 9 you can't see that -- I don't remember that from 10 seeing Exhibit 19 previously, and I'm not deriving 11 it from that.</p> <p>12 I am deriving it from a combination of 13 memory about discussions around that 6 and a half 14 billion dollars of mortgage and mortgage-backed 15 securities that are on the 388 page 2, and the 16 fact that I can see there is only 2.7 billion on 17 the mortgage line on Exhibit 19.</p> <p>18 Q. I understand.</p> <p>19 A. But I don't really -- I don't know 20 the -- I haven't seen this before, I haven't seen 21 Exhibit 19 before. At least I don't remember 22 seeing it. Therefore, I don't remember. It 23 wouldn't surprise me that 72 and a half or 70 24 were -- because, as Jasen's e-mail says, things 25 changed by that day.</p>	<p style="text-align: right;">Page 67</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. Let's talk about the mortgage-backed 3 securities for a second. At some point in time it 4 was agreed that Barclays would only take half of 5 those securities, correct?</p> <p>6 A. Yeah.</p> <p>7 Q. And was it later agreed that they 8 would take more than that?</p> <p>9 A. As I say, as I pointed out earlier on, 10 one of the difficulties here is that all of what 11 we are discussing, as far as I know, as far as we 12 were concerned, became irrelevant within hours or 13 days of the 16th. So the entire discussion about 14 this by the 17th we had put out of our minds. Or 15 the 18th.</p> <p>16 Q. "This" meaning the valuation exercise 17 you were talking about earlier?</p> <p>18 A. Yes. Because -- and that's very 19 challenging -- and we had to prioritize, because 20 in many respects around this time we were working 21 literally 24 hours a day. And so the only way to 22 manage this was to say that's now redundant, I 23 don't want to discuss it, I don't care about it, 24 we need to focus on what we need to deliver, 25 because someone has asked us something within an</p>
<p style="text-align: right;">Page 68</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 hour and a half. So now we are going to move to 3 that.</p> <p>4 So at some point -- so there are -- 5 unfortunately you are asking me about things that 6 within a day or so were irrelevant to us.</p> <p>7 Q. "Us" meaning --</p> <p>8 A. "Us" meaning my group.</p> <p>9 Q. OK. Well, tell me then why this all 10 became relevant. I assume you are talking about 11 in the Wednesday-Thursday time frame?</p> <p>12 A. Yeah, at the point that we started to 13 be asked to focus on the securities that were 14 collateralizing the Fed repo facility.</p> <p>15 Q. And what were you told in that regard?</p> <p>16 A. That here is a population of 17 securities that is collateralizing a loan that was 18 provided to LBI by the Fed, and we were being -- 19 we, Barclays was being asked to step into the 20 position of the Fed. I don't know -- I wasn't 21 part of the discussions as to why that would be 22 the case or whether it -- or how it had come about 23 or whether we would do it.</p> <p>24 My group was then asked once again to 25 provide an assessment of the probable value or --</p>	<p style="text-align: right;">Page 69</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 not just even the value actually. What was in the 3 Fed facility.</p> <p>4 Q. And who told you -- who told you all 5 this? Who gave you these instructions?</p> <p>6 A. The instructions to start to do that 7 work?</p> <p>8 Q. Yeah.</p> <p>9 A. I think, I think it was Mike at the 10 time asked us to look at it.</p> <p>11 Q. Mike who?</p> <p>12 A. Keegan.</p> <p>13 Q. And did you -- you understand that 14 there was a repo transaction entered into on 15 September 18 involving Barclays and Lehman, 16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. That's the Thursday?</p> <p>19 A. Yes.</p> <p>20 Q. And so was this assessment you were 21 asked to do prior to that repo transaction or 22 was -- were you assessing the securities that had 23 been posted into that repo transaction?</p> <p>24 A. Both.</p> <p>25 Q. So am I correct -- I assume the</p>

<p style="text-align: right;">Page 70</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 securities that were -- supported the Fed repo 3 earlier in the week were somehow supposed to make 4 their way into the September 18 repo involving 5 Barclays and Lehman, correct? 6 A. Yes. 7 Q. So you were asked to assess both the 8 Fed pool of securities and then what ultimately 9 made it into the repo? 10 A. That's correct, yes. 11 Q. And did you come to any conclusions 12 after that assessment? 13 A. Yes, the same -- we did the same 14 process that we had done on each of the previous 15 iterations. We were able to reuse some of the 16 information because there was an overlap between 17 the list of securities that were in the Fed 18 facility, ostensibly, the Fed facility and also on 19 the balance sheet of LBI. 20 We had -- I thought it was on the 21 Wednesday, we were -- I thought it was on the 22 Wednesday, not the Thursday, we were first asked 23 to look at it, which is why I say about the 24 Wednesday we started to put our pens down on what 25 we were doing previously, and I remember that we</p>	<p style="text-align: right;">Page 71</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 had literally something like about an hour or hour 3 and a half when we were first asked to look at it 4 to -- and the population was 49 or so billion 5 dollars of assets, and the question was, Stephen, 6 what do you think these are worth? 7 Q. That was a population in the Fed repo 8 or September 18 repo? 9 A. In the Fed -- sorry, is there a 10 difference between -- 11 MR. STERN: I think he is asking if 12 you were looking at the Fed portfolio. 13 A. Well, we thought -- yes, at this point 14 we were on the Wednesday or Thursday prior to the 15 funding the night of the 18th, so there was a list 16 of -- another list that was sent to us. I can't 17 remember where the list came from, whether it was 18 a list from the Fed to operations to us. I don't 19 remember the information flow. But there was a 20 list of securities. We were able to put that list 21 of securities, you know, in a spreadsheet, compare 22 it to various -- do various look-ups to see 23 whether we could find whether we had ever put a 24 price on anything that was in the Fed facility. 25 Recognizing that during the course of</p>
<p style="text-align: right;">Page 72</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 this week, Lehman had -- Lehman Holdings had 3 become bankrupt on the 13th. So almost anything 4 that we were saying about valuations was becoming 5 redundant each minute because markets were moving 6 so much. 7 MR. STERN: You said the 13th. Did 8 you mean the 15th? 9 A. I am sorry, the 15th. I think -- the 10 deal stopped happening on the 14th. Right. So 11 that week that we are talking about, markets were 12 moving tremendously because there was disarray 13 because of the bankruptcy. 14 Q. There were other events taking place 15 at the time as well, correct? 16 A. Yes. Also Merrill, so other things 17 were going on that meant that, you know, literally 18 if you had a portfolio of equities or a portfolio 19 of Treasuries or portfolio of hedges or portfolio 20 of mortgages, I would say during that week, there 21 was no -- I mean the exercise to some extent was 22 academic because we are putting a price on 23 something for which there was no bid on any of it. 24 No bid. 25 Q. Well, I think you said previously you</p>	<p style="text-align: right;">Page 73</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 were asked -- you mentioned a close to 50 billion 3 dollar number. 4 A. Yeah. 5 Q. I still don't know that you answered. 6 Is that the Fed pool or is that the collateral 7 that was ultimately posted to the September 18 8 repo? 9 A. There I am describing what we were 10 doing prior to the settlement, which was to 11 provide -- the question that had been asked to us 12 is, there is a Fed facility, I seem to remember it 13 was 45 billion dollars, and it is backed by 14 securities which have a value -- which I think 15 subsequently or around that time we found was not 16 of course -- it is neither a Barclays assessment 17 of value or Lehman assessment of value, it is a JP 18 as custodian for the securities assessment of 19 value. Not a trader's value, so not a mark, just 20 a -- you know, a price, a matrix price or wherever 21 they got their prices from, assessment of how much 22 collateral was supposedly supporting the Fed 23 facility, and the Fed facility was sized by 24 reference to haircuts to that assumed value. 25 So we were then asked to say, well, do</p>

<p style="text-align: right;">Page 74</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 we think that if you had to liquidate this 3 portfolio, that you could recover the amount of 4 the loan that was being made. 5 Q. And this is Wednesday night you're 6 asked this? 7 A. This was I think Wednesday. I 8 remember it being in the afternoon. And I would 9 think it was -- 10 MR. STERN: And Wednesday was the 11 17th? 12 A. I feel -- for some reason in my head I 13 am carrying it around as a Thursday, but I think I 14 have lost a day in there somewhere because I don't 15 think I had a night. So -- 16 MR. STERN: Just to help, I mean I 17 don't think there is any dispute about this, 18 the Fed replacement transaction was executed 19 on the 18th, into the evening of the 18th, 20 which is a Thursday. So if that helps you 21 put things in perspective. 22 A. Yes. In my mind, the time between 23 when we first were asked to look -- first became 24 aware of the Fed facility transaction and the 25 funding of it, was much shorter than a day and a</p>	<p style="text-align: right;">Page 75</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 half. So that may just have been because we 3 didn't have a night. 4 Q. I appreciate that, for all of us who 5 have missed nights as well. 6 So is this -- when you said you had 7 about an hour and a half or two -- 8 A. We had an hour and a half. There was 9 a phone call to say we are being asked to take the 10 Fed out of this. We didn't know the reason why or 11 reason for the transaction or whether it was even 12 necessarily related to it. 13 MR. STERN: "We" being you? 14 A. "We" being Barclays at that point. 15 That Barclays was being asked to take the Fed out 16 of its facility, out of this loan, and the 17 question to us as my group was, what do you think 18 about this value of securities? 19 Q. And what did -- 20 A. And I found that an extraordinary 21 situation, because we had just had the bankruptcy 22 of Lehman and we were being asked whether or not 23 we thought a portfolio of securities, which we 24 barely knew, because we had only really 25 encountered them a handful of days before, it was</p>
<p style="text-align: right;">Page 76</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 actually worth 45 billion dollars, and therefore, 3 should we permit Barclays to lend 45 billion 4 dollars against a portfolio of securities, and in 5 any normal circumstances I would never make that 6 statement or assertion. 7 Q. When you say 45, that's the amount of 8 the Fed facility? 9 A. That's the amount I remember being the 10 Fed facility. 11 Q. Secured by -- 45 was the value of the 12 pool in the Fed, to your recollection, or was that 13 the amount that the Fed -- 14 A. That was the loan amount. 15 Q. And the value or purported value in 16 the pool was about 5 billion more than that? 17 A. Well, you are using -- you are saying 18 "value" as if that was value. 19 Q. OK. 20 A. The numbers that were the JP Morgan 21 marks I think at some date, and I don't remember 22 which date it was, they may have even been from 23 the Monday or Tuesday or Wednesday, I don't 24 remember how current they were. Markets were that 25 volatile, but that they -- those numbers added up</p>	<p style="text-align: right;">Page 77</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 to -- I remember it being anything from 48 and a 3 half to 49, to 49.7. There was some -- if you add 4 up those numbers, it would appear that if it were 5 possible, if it were possible to sell into the 6 open market at those JP Morgan marks, then you 7 would get 49 point or 48 point whatever it is for 8 the portfolio. 9 Of course that's not a -- that's not a 10 value. 11 Q. OK. But -- I understand that. I 12 didn't mean to misuse that word. 13 So what did you conclude as to the -- 14 what did you respond to the people who had asked 15 you to make this assessment? 16 A. We thought it was possible that in a 17 controlled way, we might be able to recover enough 18 to cover the loan. 19 Q. Meaning the 45 number? 20 A. Meaning the 45. 21 Q. Now ultimately, that pool of 22 collateral or a pool of collateral with some 23 overlap to that gets rolled in -- gets used in 24 connection with the September 18 repo, correct? 25 A. Yeah.</p>

<p style="text-align: right;">Page 78</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. And were you asked to do anything in 3 connection with that pool of collateral? 4 A. Yes. So now -- so that exercise of 5 assessing the value of, liquidatable value of the 6 securities that were supporting the facility -- 7 the Fed facility was needed to be refined. So we 8 just carried on. 9 Even though we had given that initial 10 assessment, the reason why I think it fills a very 11 compressed amount of time, we just kept refining 12 and refining and refining our views as we analyzed 13 the portfolio. 14 Q. Right. 15 A. As we went into the Thursday -- sorry, 16 Thursday night into the Friday, there was 17 another -- there is another very difficult piece 18 that was in the middle of that, which is 19 operationally how do you settle this transaction 20 and then how do you risk manage it once the trade 21 has come in. 22 Q. Can you specify "this transaction"? 23 A. The Fed transaction. 24 The peculiarity of this, and we didn't 25 really understand this at the beginning, but it</p>	<p style="text-align: right;">Page 79</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 became clear, is, of course, the normal 3 circumstances, a repo transaction shouldn't mean 4 that the lender on the loan is long the underlying 5 risk of the securities collateralizing the loan. 6 They have a secured lending to a borrower that's 7 collateralized. 8 Here, of course, we knew that we were 9 lending to a borrower that was expected to be 10 bankrupt within a short period of time, and whose 11 parent was bankrupt. Therefore, although it was a 12 loan to a counterparty, at some point we were 13 going to be long the underlying assets. 14 And if we were long the underlying 15 assets, we therefore needed to risk manage them. 16 Because just because we had assessed that as of 17 the Thursday they were worth some amount, 18 hopefully more than 45 billion dollars, by the 19 Monday, they might have been worth 35 billion 20 dollars. 21 Q. Right. 22 A. So we better do something about that. 23 So the focus started to move from how do we 24 manage, how do we even see and book -- how do we 25 book securities that are not just going to be</p>
<p style="text-align: right;">Page 80</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 collateral for a repo but are effectively going to 3 need to be shadow booked into risk systems so that 4 we can generate appropriate risk metrics so that 5 we can risk manage them. So we -- our process 6 started to change to that. 7 Q. And this started even before you 8 booked the September 18 -- 9 A. Yes, yes. 10 Q. -- repo? 11 A. Yes. Because we had to say how are we 12 going to manage this transaction? How are we 13 going to manage this risk once Barclays has 14 lent -- once Barclays has lent -- in Barclays' 15 book, it is going to have -- the repo desk seems 16 to have lent 45 billion dollars to a counterparty 17 that is going to default, and that is 18 collateralized with a number of securities. 19 And if it followed its normal process, 20 it would be marking those securities, asking 21 desks, asking price services to -- it wouldn't 22 actually be assuming that it was going to get long 23 the collateral and have to liquidate it. 24 But here we knew that was going to be 25 the case, and it is mostly the case in other</p>	<p style="text-align: right;">Page 81</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 distressed -- it is frequently the case, and we 3 have obviously seen this because of what happened 4 with Bear and Bear's hedge funds that had 5 defaulted on repo-secured lending, that the moment 6 the repo -- the borrower defaults under the repo, 7 you seek to liquidate the collateral, and you 8 invariably don't recover enough to cover the loan. 9 You hope you are going to, but markets are 10 distressed at that moment. 11 Well, this was the mother of all 12 distress. We are in the middle of a bank, a major 13 bank defaulting that many people had thought 14 wouldn't have been left to default, but had 15 defaulted, and we were about to undertake a 16 45 billion dollar lending in which we would be 17 long this risk with very limited ways of risk 18 managing it. 19 Q. So what did you do to risk manage it? 20 A. Well, so Thursday we had to assess how 21 are we going to record in our books securities, 22 when we haven't actually booked the securities, we 23 booked a repo facility. So we had to construct 24 shadow books that were going to represent the risk 25 of the securities that were in the repo facility,</p>

<p style="text-align: right;">Page 82</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 and then we sought to insure that -- our plan was 3 on the Thursday, each of the desks had a list of 4 the securities that they were expecting to 5 receive, and we had informed them that of course 6 repo is -- this was overnight repo. We weren't 7 but -- a week earlier, by the way, we were not 8 experts in repo. So some of what I am able to 9 talk about now about that repo facility, I 10 actually only learned afterwards.</p> <p>11 But this was overnight repo, which 12 meant that strictly speaking the borrower could 13 switch the collateral within the repo facility 14 each night. So we had advised the respective 15 desks, thinking about, you know, in a similar way 16 we categorized the assets that were in the repo 17 facility in a similar way to the way they are 18 categorized on 388-B, and we passed those out to 19 the relevant desks and said tomorrow, you are 20 going to be -- we need you to help us manage this 21 exposure.</p> <p>22 And we sent lists to each of the 23 desks. Of course -- but we told them they may 24 marginally change overnight, and until we are 25 certainly long the risk, we can't hedge. We</p>	<p style="text-align: right;">Page 83</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 couldn't hedge prior because of course if for some 3 reason the transaction hadn't settled, we would be 4 short the market, so there was no way to hedge 5 until we knew that we actually were long the risk. 6 Q. OK then. There was a lot there, so 7 let me ask a couple of questions. 8 When you say we were certain we were 9 long the risk, that would be when there was a 10 default? 11 A. No. Once the securities had settled 12 into Barclays. 13 Q. Oh. 14 A. Which would have been the Thursday 15 night, Friday morning. 16 MR. STERN: You might just explain 17 what you mean when you talk about long the 18 risk and so on. 19 A. On Thursday, there was -- we knew that 20 there was a Fed facility. Barclays had not lent 21 any money to Lehman. The Fed had lent money to 22 Lehman and collateralized that lending with 23 securities. 24 Q. Right. 25 A. That night, Barclays would effectively</p>
<p style="text-align: right;">Page 84</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 replace the Fed, thereby knowing for certain that 3 it had a secured loan out to Lehman, LBI, where 4 LBI was expected to default. 5 So it is not until for certain that 6 Barclays has funded that loan that it could say 7 that it definitely is long the risk of the 8 underlying securities. 9 Q. OK. So if -- 10 A. So for example -- maybe it is easiest 11 by example. If we took a single security on the 12 Thursday, in normal trading, in a normal trading 13 environment, I might be negotiating with a 14 counterparty to buy something and I might be 15 agreeing the price and we might be trading, but -- 16 and I might know that the moment that I want to -- 17 moment that I know I am going to be long the 18 security, I will need to hedge, and I have worked 19 out how I am going to hedge, but until the trader 20 tells me done, not just at some point while we are 21 discussing the price, if I decide to hedge before 22 he says done and then he says, you know what, 23 change my mind, now I have put a hedge on against 24 nothing and I have got to take the hedge off. 25 So until we know that this repo</p>	<p style="text-align: right;">Page 85</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 transaction -- this replacement repo transaction 3 has settled, it would be -- it was a trading 4 decision whether or not we should hedge before it 5 settles or after it settles. And we elected to 6 start hedging after it settled. 7 Q. So when you say settles, that's on 8 Thursday, the 18th? 9 A. Thursday night into Friday morning. 10 Q. So that -- OK, I think I understand 11 that. 12 But aren't you -- I guess I didn't 13 understand the shadow book concept. I thought you 14 weren't long the security until LBI defaults on 15 the Friday. 16 A. Formally -- exactly right. Until the 17 Friday when there is the default of LBI, then the 18 systems would record a secured lending facility. 19 As I say, some of this, you know, back filling the 20 knowledge because we learned how it really would 21 happen after the fact. 22 Q. Sure. 23 A. But that there would be a loan and the 24 repo desk would say, I have got a loan out to LBI 25 and it is collateralized by the following</p>

<p style="text-align: right;">Page 86</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 securities, but it isn't equipped to hedge or 3 manage those underlying securities because it is 4 not expecting to ever need to. It thinks it has 5 got an overcollateralized loan.</p> <p>6 Q. Right.</p> <p>7 A. Where it hopes -- where a repo desk 8 risk management ought to be, I've lent you money, 9 I have got some additional margin over and above 10 the amount of money that you have lent, that I 11 have lent you, and if you default, I am going to 12 sell it all as quickly as possible. I am not 13 going to reflect on it and think about whether I 14 would like to -- those are trading decisions for 15 someone else. I am going to sell it.</p> <p>16 And hence, when you try to sell 17 something in that way, you would invariably, 18 regardless of whether the last trade observed in 19 the market was 95, if you phone up somebody and 20 say I need a bid, you might get a 85, and that's 21 why they need the margin. But that would be their 22 normal repo risk management decision.</p> <p>23 Here we were going into this lending 24 with the benefit of knowledge that within 24 hours 25 to 48 hours, it would be the case that this</p>	<p style="text-align: right;">Page 87</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 borrower would default, so that there was no value 3 to the counterparty, and furthermore, we were 4 therefore going to be long a humongous number of 5 securities that we would have no ability to sell.</p> <p>6 Q. So for that reason you start risk 7 managing those securities the minute the repo 8 settles?</p> <p>9 A. First we say -- many of these 10 securities have -- so the -- maybe again it is 11 worth just touching on this for a second.</p> <p>12 When I talk about risk, what I mean is 13 that what is the expected change in value of a 14 security with respect to a change in something 15 else. So many of the securities have interest 16 rate sensitivity.</p> <p>17 Q. Right.</p> <p>18 A. How much would the value of these 19 bonds change if the interest rates went up.</p> <p>20 Q. OK.</p> <p>21 A. We would also come up with some crude 22 estimates for, say, the equities portfolio, which 23 would be how much of the S&P 500 does this equity 24 portfolio look like. For the RMBS securities we 25 might say how much of a particular mortgage-backed</p>
<p style="text-align: right;">Page 88</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 index does this portfolio look like.</p> <p>3 Because we can't know -- we know there 4 is no way we can sell. If we go out and start 5 selling at 8 a.m. on the Friday morning, five days 6 after the bankruptcy of Lehman, we would 7 recover -- I don't know what we would recover.</p> <p>8 And we already knew that where we had 9 seen some of the bids in the market during that 10 week where other people have been selling -- bear 11 in mind, the market was flooded with collateral 12 from the bankrupt Lehman Brothers Holding and 13 LBIE, so that people were closing out other repo 14 facilities. So the market was full of Barclays -- 15 of Lehman's securities that were already being 16 sold. So -- and we were about to get long another 17 45 billion dollars of them.</p> <p>18 So there would be no way for us to 19 manage that. The only way we could do it was 20 bring the risk on to our systems, assess how 21 volatile it was going to be and what parts of that 22 volatility we would have to hedge with instruments 23 in more liquid markets. For example, S&P. For 24 example, interest rate derivatives.</p> <p>25 And that's what we started to do on</p>	<p style="text-align: right;">Page 89</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 the Thursday in anticipation, what systems are we 3 going to need to help manage that and what are we 4 going to do on the Friday. Of course, that was 5 complicated, further complicated by the fact on 6 the Friday morning we woke up to discover we don't 7 own the same portfolio we thought we were going to 8 own a day earlier.</p> <p>9 Q. OK. Let me put that issue aside for a 10 minute here. I think I followed you. It is an 11 area that I am not familiar with, so I apologize.</p> <p>12 So on Thursday, you are risk managing 13 or hedging the volatility that you foresee in that 14 pool of securities as a result of all this market 15 activity that you have seen? The plan was to 16 hedge the portion you needed to hedge and then 17 sell the securities later?</p> <p>18 A. Yeah. So I think the answer to your 19 question is actually no, we were not hedging on 20 the Thursday. We were starting to work out 21 that -- the process up to the decision of will 22 Barclays lend against this pool of assets was one 23 that would incorporate both an assessment of 24 Barclays' assessment, not JP's assessment or 25 Lehman's assessment or anybody else, but Barclays'</p>

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<p>1 KING - HIGHLY-CONFIDENTIAL 2 traders' assessment of what was the realizable 3 value of the securities and the amount of -- it 4 would need to have some amount of cushion over and 5 above the amount that it would lend, because the 6 moment that it started to sell, Barclays itself 7 would drive the market down.</p> <p>8 Q. Right, right. 9 A. So we needed to do two things on 10 Wednesday and Thursday. One, an assessment of an 11 estimate of what we thought was a reasonable 12 liquidation value for the portfolio, and then, 13 two, what was a reasonable guess at the risks that 14 we were taking by being long that portfolio. 15 That's what we were doing Thursday. 16 On Friday then -- 17 MR. STERN: "That portfolio" is the 18 Fed portfolio? 19 A. For the portfolio we thought we were 20 going to take delivery of, or best guess of the 21 portfolio we thought we were going to take 22 delivery of on the Friday. 23 But it wasn't until -- and then we 24 made a decision not to hedge on the Thursday. And 25 then on the Friday, once we knew the transaction</p>	<p>1 KING - HIGHLY-CONFIDENTIAL 2 had been consummated, so we knew that we were 3 actually long -- 4 Q. That's Thursday night, Friday morning? 5 A. So some point Thursday night, somebody 6 would have phoned me and said, Stephen, we are 7 long. So then we knew we had eliminated one risk, 8 which was the execution risk. 9 Q. Right, right. 10 A. Because we couldn't -- the reason for 11 not hedging was we could never manage -- never 12 hedge the execution risk. 13 Q. Right. 14 A. But on Friday we now know we are long. 15 Let's say that was at 2 o'clock in the morning or 16 something. No markets are open, so there is no 17 way to start selling or to manage -- actually we 18 couldn't start selling because actually it is just 19 a repo facility, it is not that we are long the 20 assets, so you couldn't sell on the Friday. 21 So therefore, we would have to think 22 up things we could use to hedge the risk. And 23 that's -- we started that process on Thursday. By 24 Friday we started to realize there are securities 25 that we thought we were going to take delivery of</p>
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<p>1 KING - HIGHLY-CONFIDENTIAL 2 that we haven't, and there were securities that we 3 have never seen before. 4 Q. What happens when you -- is that early 5 in the morning Friday? 6 A. We started to be aware of that early 7 in the morning Friday. 8 Q. So take me through what happens. I 9 assume you take that to someone's attention? 10 A. Yes. 11 Q. What happens in that regard? 12 A. They say what -- so what do you want 13 to do, Stephen, and we start the process again, 14 which is OK, we have got a list of securities, do 15 we have a complete population -- bear in mind -- 16 the reality is, this was -- there was a tremendous 17 number of people that were involved in this, 18 because this was a -- you know, it had to be a 19 very sensibly and carefully risk managed process. 20 We couldn't eliminate the uncertainty associated 21 with prices, but we ought to be eliminating the 22 uncertainty associated with how we managed the 23 process. 24 So a lot of people involved, but the 25 Friday morning therefore we just started to do</p>	<p>1 KING - HIGHLY-CONFIDENTIAL 2 again what we had done the day before, how many of 3 the securities do we know? Do we have a complete 4 population? How do we categorize the securities 5 that we haven't seen before, what are they, and 6 actually less what do we think they are worth at 7 that point, because it doesn't matter. More what 8 matters is what are they and how do we manage 9 them, and that's what we did on the Friday. 10 Q. Can I ask you a question. I think -- 11 tell me if I am wrong. I understood that there 12 was some kind of glitch in transferring the Fed 13 pool of securities to the repo to the tune of 14 about 7 billion dollars, and that Lehman, to make 15 up that shortfall, took a loan and put it into the 16 repo. Is that your understanding? 17 MR. STERN: Objection to the form. 18 A. All I know is -- I reiterate the role 19 that we were playing. The role that we were 20 playing is we are not operations people. We are 21 traders and risk managers. Our job was to assess 22 value and then manage the multitude of risks 23 associated with the acquisition of the assets. 24 I know by construction that there were 25 differences between what we thought we were going</p>

<p style="text-align: right;">Page 94</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 to be risk managing on the Thursday and what we 3 were actually risk managing on the Friday, and I 4 know that that is -- that there was 7 billion 5 dollars of supposed value, and I think they were 6 using -- I don't know what marks they were using, 7 but 7 billion dollars that had been substituted 8 for cash, which therefore cash doesn't -- nice 9 thing about cash, you don't have to risk manage 10 it, or at least we didn't think so.</p> <p>11 Q. I would assume so. 12 MR. STERN: Turns out you did. 13 A. Turns out we did. Cash is supposed to 14 be cash. 15 And then in addition to that -- so 16 there was a -- there were less secure -- rather 17 than -- and I'm using these numbers just to try to 18 indicate population as opposed to the accuracy of 19 the numbers. 20 So that we had anticipated that at JP 21 marks, that there was a population that JP 22 assessed as being worth 49.7 of securities, that 23 actually that was 42.7. Therefore -- and there 24 was 7 billion of cash. 25 In addition, though, within the</p>	<p style="text-align: right;">Page 95</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 securities, they were not the same population. So 3 it wasn't even that it was just a subset of the 4 original population, the Thursday population, it 5 was a subset of the original population plus about 6 10 billion dollars of stuff that we had never seen 7 before. 8 Q. That's where I was leading with the 9 question. In other words, the difference that you 10 saw between what you expected and what you 11 received is both in the size of the pool as well 12 as the composition of part of the pool? 13 A. Correct. There was approximately -- 14 again I am using these numbers, using -- by 15 reference to the JP marks, not my assessment of 16 value or what we were ultimately able to sell them 17 for. There was something like 49 -- we thought 18 that there was going to be something like 49, a 19 population that JP would mark at 49.7. There 20 actually was only about 32 billion dollars of that 21 population was delivered. 22 Then there was 7 billion of cash or 23 cash that -- you know, cash was cash, and then 24 there was 10 billion dollars, and now -- for which 25 we didn't have any equivalent JP valuations, but</p>
<p style="text-align: right;">Page 96</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 that once they arrived at BoNY, which was our 3 custodian, BoNY assessed as having marks in total 4 of about 10 billion dollars, and that portfolio we 5 had not seen before. 6 Q. What did you do with respect to that 7 portfolio and the BoNY ones? 8 A. The exact same as we had done with all 9 the preceding lists of securities. We tried to 10 assess had we got the entire population. 11 Bear in mind, the reason we do that, 12 there is no point in risk managing something if it 13 isn't what you actually own. So it has to start 14 with do I really own this. We spent a tremendous 15 amount of time focusing on do I have this, is this 16 a population, categorizing the population, because 17 now all we have got is a list of CUSIPs, so you 18 have to get from CUSIPs to a description of the 19 asset by name, by asset type, then to break it out 20 into asset types, and then to assess what we think 21 its risk is and what its value ought to be. 22 Q. And so that's a process you started 23 with respect to this 10 billion dollars -- 24 A. On that Friday morning. 25 Q. -- on that Friday. Did you come to a</p>	<p style="text-align: right;">Page 97</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 conclusion on that Friday or when? 3 A. I think one thing that's also worth 4 pointing out, the idea of a conclusion suggests 5 finality. We had -- and I don't think we -- the 6 conclusion probably should be the date on which 7 ultimately it was sold, and stuff took a year to 8 sell. 9 On that Friday, yes, we did start to 10 think that we had a list of all the securities 11 that were delivered. That took time. And we 12 started to estimate our own -- you know, Barclays' 13 trading desk values for them in -- you know, in 14 the environment that we were in, and the risk. 15 Q. And did you come to any interim 16 assessments on that Friday? 17 A. Yes, yes. 18 Q. What did you assess on that Friday? 19 A. In relation to -- I don't really 20 remember too much on that Friday about the 21 valuations, because we were very focused on the 22 risk. 23 Q. OK. Would you have the same answer if 24 I said over the weekend? 25 A. Yeah. I mean over -- no, over the</p>

<p style="text-align: right;">Page 98</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 weekend, then it started to change. The -- we 3 were, you know, reassess -- we -- between there 4 and the end of the year, end of the financial 5 year, we were constantly reassessing what we 6 thought was the value of the securities. 7 So you're right, over the weekend we 8 started to revert back to what do we think the -- 9 what number are we going to use as a -- when 10 management is asking me, well, Stephen, what did 11 we take delivery of, they would like an answer and 12 they would like it now, not a better answer in 13 three weeks' time. So we had to come up with 14 something. But that was a crude response. 15 And in some respects it didn't really 16 matter to what we were doing, "we" being my desk, 17 because what really mattered is, do we have the 18 population and what is the risk of it. 19 I know that obviously some of the 20 valuation work we were doing would then be feeding 21 back into the negotiations that other parties were 22 having about a deal with Lehman, but it actually 23 wasn't very germane to what we ourselves were 24 doing. 25 Q. I think I understand that.</p>	<p style="text-align: right;">Page 99</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 You have mentioned two different -- 3 this is Friday now. You mentioned two different 4 sets. One is 32 billion dollars worth of 5 securities which had JP marks on them, and the 6 other is this 10 billion dollars of securities 7 that you had never seen before which had BoNY 8 marks on them. 9 A. BoNY marks on it. 10 Q. Is this assessment that you are doing 11 over that weekend primarily focused on the 10 12 billion dollar pool? 13 A. No, everything. 14 Q. Are you coming to some interim 15 conclusions during that weekend about the marks? 16 A. Yes. 17 Q. And what are you finding out that 18 weekend? 19 A. I don't really -- the one thing that I 20 remember is saying that I felt that the cumulative 21 amount of securities and cash that we had received 22 in an orderly disposal, in not just a fire sale, 23 we couldn't just sell -- we couldn't say let's 24 sell these over the weekend and then we are done 25 by Monday.</p>
<p style="text-align: right;">Page 100</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 The -- there was -- the loan was 3 adequately collateralized. And that I remember. 4 Q. And you told that to your supervisors 5 or whoever was asking? 6 A. Yes, yeah, yeah. And then on the 7 Friday we started to hedge. 8 Q. You started to hedge both the 32 9 billion pool and the 10 billion? 10 A. We didn't differentiate. We really 11 didn't start talking too much about what we had 12 received. Much of the discussion about what we 13 had received versus hadn't received really didn't 14 go on until later on. 15 We only really cared about what 16 would -- you know, the cumulative amount of what 17 we had received. 18 Q. Later on meaning after the weekend? 19 A. Yeah, weeks later. 20 Q. So did you have any discussions over 21 that weekend with Lehman or did anyone from 22 Barclays have discussions with Lehman as to, in 23 words or substance, hey, how come we got 24 10 billion dollars of securities we weren't 25 expecting?</p>	<p style="text-align: right;">Page 101</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. I know there were discussions, both 3 with JP and Lehman. We weren't -- my desk weren't 4 part of those discussions. 5 Q. All right. Do you have any 6 understanding of what happened in those 7 discussions? 8 A. In relation to what? 9 Q. Well, do you have any -- someone from 10 Barclays said words to that effect to Lehman, 11 right? 12 A. Or to JP. I don't know -- the deck 13 securities had come from JP. So why -- so -- all 14 we cared about, why have we not got the same 15 population that the Fed thought it had the night 16 before? 17 Q. You are comparing what you got on 18 Thursday night and Friday to the population that 19 you had spreadsheets about what was previously 20 comprised of the Fed pool? 21 A. Yes. 22 Q. And there was a difference in about 23 10 billion dollars worth of those securities? 24 A. 17 or so billion, because there is 25 some missing, 7, and then the 10, and using those</p>

<p style="text-align: right;">Page 102</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 JP or combination of JP and BoNY numbers. But we 3 weren't ever part of the conversations about what 4 had happened and why it had happened. 5 Q. OK. Just so I am clear, you had a 6 pool of some close to 50 billion dollars of marked 7 securities for the Fed. What you get on Thursday 8 night or Friday is about 7 billion in cash, 9 32 billion with -- that had been in that pool, and 10 about 10 billion of new securities; is that right? 11 Am I understanding the groups now? 12 MR. STERN: Can I hear the question, 13 the question back. 14 MR. HINE: Let me try again. It was a 15 long convoluted question. 16 Q. You previously had a list or some kind 17 of data that showed about 50 billion dollars worth 18 of assets in the Fed pool, correct? 19 MR. STERN: Objection to the form. 20 A. Well, the -- we had a population of 21 securities which we were expecting to take 22 delivery of which we understood was supporting a 23 Fed facility. 24 Q. And that -- I'm just trying to -- I am 25 drawing a Venn diagram in my head. I want to see</p>	<p style="text-align: right;">Page 103</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 how what you expected to be in the Fed facility 3 compared to what you ultimately received. 4 A. Right. 5 Q. As I understand your testimony, tell 6 me if I am wrong, it is about 32 billion dollars 7 of what you ultimately did receive had previously 8 been in the Fed facility, to your understanding; 9 is that right? 10 MR. STERN: Objection to the form. 11 A. Unfortunately what we are having to do 12 is to use -- because we couldn't -- when we are 13 talking about the population, we can't describe -- 14 between you and I, we can't discuss CUSIPs and we 15 can't discuss asset types, so we are ending up 16 using JP Morgan numbers to describe populations. 17 So I'm just being a little bit 18 cautious about the fact when you say 32 billion, 19 that 32 billion dollars is just the sum of the JP 20 Morgan marks at a particular time. 21 Q. Right, right. 22 A. That was probably a different time to 23 the time of the 49 billion dollars worth of 24 JP Morgan prices on securities that we thought to 25 take delivery of. So I am just being particular</p>
<p style="text-align: right;">Page 104</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 about that. 3 Are we saying that they are of a 4 population that JP Morgan at some point had marked 5 at 49.7, I seem to remember, did we take delivery 6 of a subset of that, using your Venn diagram, that 7 JP Morgan had assessed at about the time of the 8 settlement as 32 billion dollars, yes. 9 Q. And in addition, you took delivery of 10 a pool that BoNY had assessed at about 10 billion 11 dollars of new securities that were not part of 12 the Fed pool? 13 A. Yes, yeah. 14 MR. STERN: Objection to the form. 15 Can I hear the question again. 16 (Record read) 17 MR. STERN: You can answer that. 18 A. Yeah, I think that's right. I also 19 don't know -- when I come to think about it, I 20 don't even know whether the 32 -- I think the 32 21 that you are referring to probably was -- we had a 22 list of securities that from a number of days 23 before we had JP Morgan's -- bear in mind, the 24 moment that the securities moved from JP as 25 custodian to BoNY as custodian, they are not</p>	<p style="text-align: right;">Page 105</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 then -- the availability of the marks by the 3 previous custodian at that moment are not 4 available. 5 So it may be even that the 32 billion 6 dollars is actually BoNY as opposed to the 7 original JP. I think it was the mark -- it was 8 the sum of the marks that JP had put on the 9 portfolio the last time JP had provided it. 10 Q. OK. 11 A. Then there was a population of 12 securities which then BoNY provided, because BoNY 13 provided custodial marks. We actually used to 14 call them custodial, although that's a desk 15 colloquial term. The custodial marks provided by 16 BoNY on the population we hadn't seen before was 17 approximately 10 billion dollars. 18 (Exhibit 389-B, document Bates stamped 19 BCI-EX-S 75200 through 201 marked for 20 identification, as of this date.) 21 Q. Mr. King, handing you a copy of a 22 document marked as Exhibit 389-B, which is Bates 23 stamped BCI-EX-S 00075200 through 201. Please 24 take a minute, and I will have a few questions 25 about this.</p>

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1 KING - HIGHLY-CONFIDENTIAL 2 Have you had a chance to look at that? 3 A. Yes. 4 Q. The title of this e-mail is "Barclays' 5 team/teams on their way over to meet with us on 6 our positions and marks, obviously critical." 7 Do you see that? 8 A. Yeah. 9 Q. Was there a meeting that took place on 10 Friday between Lehman and Barclays about this 11 issue? 12 A. There were -- not with us. Not with 13 my group. Although David Martin was part -- I had 14 actually forgotten that David Martin -- formally 15 at this point I worked for David Martin, who 16 worked with Eric. David Martin is not with the 17 firm. David Martin hadn't really been involved in 18 anything to do -- or hadn't been involved in 19 anything to do with this Lehman acquisition. 20 So that's David's involvement. 21 On the Friday, as I recollect, because 22 the repo facility had now settled, that seemed to 23 indicate a consummation of an ultimate transaction 24 whereby there would be something happening between 25 Lehman and Barclays. And so various desks, the	1 KING - HIGHLY-CONFIDENTIAL 2 flow desks, the other trading desks did start to 3 have dialog with their counterparties at Lehman 4 about stuff. But not with -- not with us. 5 Now, David here -- so that wasn't -- 6 the answer is, there were meetings, but I don't 7 know much about the meetings. 8 Q. Did you participate in any meetings on 9 that Friday? 10 A. I don't think so. I don't think so. 11 I mean I have met -- I've met Charlie Spero maybe 12 twice throughout the whole process. I think I met 13 Eric Felder once before the 12th. That's 14 literally the extent of the discussions. 15 There were various telephone 16 conversations between Jasen and -- at various 17 times to try to identify what particular 18 securities were, because we had no idea what they 19 were. They just had a CUSIP, and then it would 20 say fixed income instrument. So we had to help 21 find out what they were, but it was very limited. 22 Q. That's Mr. Yang? 23 A. That's Jasen Yang, yes. 24 Q. Charlie Spero is your counterpart at 25 the former Lehman?
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1 KING - HIGHLY-CONFIDENTIAL 2 A. He wasn't my counterpart. He was a 3 trader that ran the mortgage desk at Lehman. 4 Q. So, but you didn't participate in any 5 meetings on this Friday about positions and marks? 6 Is that right? 7 A. No, I didn't, no. 8 Q. Do you know -- do you have any 9 understanding about what happened during those 10 meetings? 11 A. So this is on -- this is 2:58 on the 12 Friday. 13 Q. That's Greenwich time, right? 14 A. That's Greenwich, so that makes much 15 more sense. So 2:58. So this is midmorning on 16 Friday, when we would be realizing that we haven't 17 got what we thought we were going to take delivery 18 of. 19 And if you read the top sentence, 20 David's response to me, when I say, "I assume you 21 are talking to Kaushik," Kaushik was the -- so 22 David, David Martin, I'd asked David to look at 23 the agency mortgage pool, agency mortgage security 24 pool, because we do trade those. I asked David to 25 look at those within the population -- that had	1 KING - HIGHLY-CONFIDENTIAL 2 ultimately been delivered on the Friday morning. 3 And what this e-mail highlights, and 4 as I say, I think it is one of a variety of things 5 he said, is an effort on the Friday morning, it 6 wasn't altogether coordinated, to determine what 7 we had got. Because the first sentence says, "I 8 have called the derivative and CNO guys." By 9 that, he means the agency mortgage and derivative 10 traders. 11 "Derivative guys said a lot of 12 positions did indeed look like repo ones in the 13 file I sent." So there has been a file that we 14 have created, the securities which we have taken 15 delivery of on Friday that we had never seen 16 before, that I have sent to David, that David has 17 sent over to a counterparty at Lehman. And the 18 first paragraph highlights that we are just in the 19 process of trying to work out what we have got and 20 has anybody seen them before. 21 Q. What does he mean in the first 22 paragraph where it says, "told him to mark them 23 consistent with his inventory. Appeared he got 24 the message from above to remark positions." 25 Do you have any understanding of what

1 KING - HIGHLY-CONFIDENTIAL 2 that means? 3 A. Right. So I'm not sure where this -- 4 this may have actually -- I think -- there were 5 two -- you mentioned that there were -- there 6 was -- there is sort of multiple tracks that may 7 have been going on simultaneously here. We 8 were -- my desk was focused on what assets do we 9 have, what do we think we can recover from them, 10 in valuation, you know, in liquidation valuation, 11 and how do we risk manage them. 12 There also was a formal process of how 13 do we and how do Barclays and Lehman mark the 14 books and records, the securities. 15 I don't even know whether this was 16 something that was Lehman asking Lehman people to 17 mark their securities or Barclays asking Lehman 18 people to mark their securities or for what 19 purpose it was. 20 Bear in mind, traders were supposed to 21 still be sitting in their seats of a nonbankrupt 22 entity on the Friday marking their books. They 23 still had a -- they worked for a broker dealer. 24 They have long risk positions. They have an 25 obligation to mark every day.	1 KING - HIGHLY-CONFIDENTIAL 2 Q. Well, Lehman, LBI declared bankruptcy 3 on that Friday, right? 4 A. Maybe that was it. Was it on the 5 Friday? 6 MR. STERN: The 19th? 7 A. OK. I don't know. Maybe that was on 8 the Thursday -- I don't know the timing of this 9 particularly, but the -- presumably there was -- I 10 could see that they -- the traders had to mark 11 certain things. 12 I think this, David's involvement here 13 is because we would like to have a mark on what we 14 have just taken delivery of, because all we have 15 got is a list of securities, and what was clear, 16 it is not clear from this e-mail, is that some of 17 the securities at the BoNY marks were atrociously 18 mismarked. So you need a trader. 19 Most price testing functions work 20 extremely hard. Price testing functions meaning 21 groups. We have a price testing group within 22 Barclays. There is a price testing group within 23 Lehman. BoNY and JP as custodians need to try to 24 come up with prices for thousands and thousands 25 and thousands of securities every day. So they
1 KING - HIGHLY-CONFIDENTIAL 2 have to do it in some kind of batch way. So they 3 come up with heuristics by which they mark things, 4 because otherwise how could you do it? 5 But that's not the same as where a 6 trader on a minute, who sat in his seat, talks to 7 other traders and says, I would be willing to 8 trade. It is supposed to be a pretty good guess, 9 but it is never perfect. 10 And in between the bankruptcy of LBH 11 and bankruptcy of LBI, it was -- you know, it 12 is -- the tracking error of that kind of approach 13 is bound to be big. So as soon as we have taken 14 delivery, it is great -- at least we have got 15 BoNY's assessment of where they thought they would 16 be willing to advance against -- bear in mind, the 17 other thing about the BoNY and JP marks is that 18 the Fed was using -- what the Fed does when it 19 takes those marks is -- I can't remember the 20 advance rates. I learned them later on. 21 But when the Fed lends, if you looked, 22 went to the Fed's website and looked at the 23 advance rates of the securities, what it does is, 24 it says, we will assess a value of security at 25 some mark that the custodian has provided us, and	1 KING - HIGHLY-CONFIDENTIAL 2 then we will advance less than that as the loan. 3 So for example, for mortgage-backed 4 securities that might only be 50 percent of the 5 supposed mark. So they are not as worried, and in 6 normal market conditions that's supposed to be 7 fine. They are not actually as worried that they 8 have got the mark perfect, because they are only 9 lending 50 cents on the dollar, or on equities, 10 for example, I think they lend 90 cents on the 11 dollar. For agencies maybe they lend 80 cents on 12 the dollar. 13 So they are saying, I think I have got 14 this, I know statistically I must have some error 15 on it, but I am only lending 80. Whereas the 16 trader when he trades, he is trading there, and he 17 is exposed to the first dollar of mispricing, not 18 the dollar after the haircut. So they have very 19 different tolerances for error. 20 So this, on that Friday morning what I 21 asked David to do, let's see if we can get an 22 assessment as quickly as possible of the -- what 23 the things we haven't seen before are worth, and 24 it may have been, I don't remember, also the 25 stuff, what we long today, worth today, not

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1 KING - HIGHLY-CONFIDENTIAL 2 yesterday, because that also is different. 3 And what he is highlighting is that 4 there are -- in the first paragraph he highlights 5 that of course the Lehman guys hadn't actually got 6 in their inventory the list of securities that 7 were part of the repo. Because of the 8 intercreditor relationships between the various 9 Lehman Brothers entities, it wasn't necessarily 10 the case that everything that was in the repo 11 facility was also on the Lehman balance sheet, 12 Lehman Brothers, LBI balance sheet. 13 And in the second paragraph it also 14 has -- there must have been a separate 15 conversation going on. There is a typo in there, 16 actually, but it says, "an orderly liquidation 17 mark." Notice the use of the term "orderly 18 liquidation mark," not liquidation today mark. 19 Because we couldn't -- that would have been 20 50 cents on -- that would have been who knows, but 21 20 billion dollars. There just could be no bid. 22 There was no bid for any of this on this date. 23 And the second is a typo in there. It 24 says "at a bin in comp." That should be "a bid in 25 comp mark." That was presumably supposed to be	1 KING - HIGHLY-CONFIDENTIAL 2 more of an assessment of, you know, if you had 3 to -- if you were willing to buy it today, where 4 would you buy it. 5 So they are being asked to provide an 6 assessment of both. But that wasn't for us. 7 Q. "It wasn't for us" meaning -- 8 A. It wasn't for my group. That might 9 have been for Lehman, it might have been for -- 10 Q. So is your group, this whole -- I 11 understand you to be saying that your group was 12 focused on getting the population that we had been 13 provided, at least an accurate assessment of what 14 we got? 15 A. Yes, yes. 16 Q. Was there another group focused on how 17 to mark them price-wise? Or how to book them into 18 Lehman's system -- I mean Barclays' system? 19 A. No. Not -- not that part, but product 20 control -- and -- I'm trying -- I was trying to 21 explain what I do know about this e-mail and about 22 things that happened on the Friday. So hopefully 23 I have answered that question. 24 Q. Yeah. 25 A. This feels like a different question,
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1 KING - HIGHLY-CONFIDENTIAL 2 which is was there another group that was also 3 marking securities. Is that right? 4 MR. STERN: I think what Bill wants to 5 know is, who was involved in the booking of 6 the securities and ultimately marking them 7 on the Barclays side. 8 A. As a formal matter, it is always the 9 trader's responsibility to mark a book. As a 10 practical matter then, there are price testing 11 groups that are within that product control group, 12 PCG function, that have a responsibility to assess 13 whether the traders have marked their books 14 correctly, and they can ask them to revisit their 15 marking and remark them. 16 Q. OK. 17 A. That's the logic of the trader and the 18 control function. 19 Q. OK. 20 A. So that would have been -- that at 21 some point -- I don't know whether it was 22 happening on the Friday. At some point that would 23 have had to have happened. 24 In addition, Barclays would have to 25 construct the balance sheet, an acquisition	1 KING - HIGHLY-CONFIDENTIAL 2 balance sheet that represented what it had 3 ultimately purchased by way of this transaction. 4 That again would be a finance -- it is finance's 5 responsibility, not the desk's responsibility, to 6 produce balance sheets. 7 Therefore, finance would have to make 8 a determination of what it thought was the 9 appropriately price tested valuation for the 10 securities that were acquired on the acquisition 11 date. 12 Q. OK. 13 A. That didn't really happen. That 14 happened over a very long period of time. So 15 hopefully that answers that second question. 16 Q. It does. 17 The finance function and the 18 preparation of the balance sheet I take it is in 19 the finance department, not in the PMTG 20 department; is that right? 21 A. That's right. Under normal 22 circumstances, if everything worked well, traders 23 would mark their books. Those marks would be 24 picked up by systems -- the same for Barclays as 25 any other bank. Those marks would be picked up in

1 KING - HIGHLY-CONFIDENTIAL 2 systems, and they would roll up and actually form 3 the valuations that are used in constructing 4 balance sheets. 5 Q. Right. 6 A. There is a control function which is 7 price testing, which is constantly vetting whether 8 or not desks are marking their books 9 appropriately, and so obviously with an 10 acquisition like this, it was -- it would be, as 11 we -- again, some of this is stuff I know after 12 this date, but now know what would have been 13 happening at that time. Responsibility to produce 14 a balance sheet that represented what Barclays 15 acquired on that date. That's obviously very 16 related to what the desk is saying it is valuing, 17 but it isn't necessarily the same. 18 Q. Sure. I understand. 19 Let's step back for a minute. You 20 talked about the pool of assets that you, Barclays 21 did receive on the Thursday night, Friday morning 22 period. 23 A. Right. 24 Q. Did there come a time over the weekend 25 when Barclays demanded more assets from Lehman in	Page 118 1 KING - HIGHLY-CONFIDENTIAL 2 connection with the Lehman transaction? 3 MR. STERN: Objection to form. 4 A. I don't really know what you mean. 5 Are you talking about the -- there are -- the 6 discussions with Lehman were ongoing and were 7 separate from anything that we were dealing with 8 here. We were -- 9 THE WITNESS: Can I ask you something 10 about this? 11 MR. STERN: Sure, sure. 12 MR. HINE: OK. Is this a privileged 13 question or is it -- 14 Let's go off the record. 15 (Witness and his attorney left 16 deposition room) 17 (Recess) 18 MR. HINE: Back on the record. 19 Q. Mr. King, I think I asked a confusing 20 question, so I want to try to clarify it. 21 I am asking about, did there come a 22 time during the weekend of the 20th and 21st where 23 Barclays asked Lehman to provide additional 24 assets, and what I am referring to is the -- what 25 we have been calling unencumbered assets or the
Page 120 1 KING - HIGHLY-CONFIDENTIAL 2 clearance box type of assets or 15c3 type of 3 assets. I am trying to get a sense of whether you 4 were involved in that issue. 5 MR. STERN: Just one objection. I 6 think we are talking about the 19th, but 7 subject to that objection. 8 Q. Correct, correct. 9 A. No, I subsequently became aware that 10 there were unencumbered assets that needed to be 11 valued and risk assessed. But no, not at that 12 point. 13 It would come as no surprise that 14 there was discussions, because as I pointed out 15 earlier, that the -- you know, we were being asked 16 to fund a -- to take the Fed out of the facility, 17 valuing the portfolio securities that we hadn't 18 seen, you know, before, and it was going to be 19 very difficult to assess their value, and I very 20 much doubt -- I would totally assume that there 21 would be -- that under any normal circumstances, 22 Barclays did not think that the lending of 23 45 billion dollars against this portfolio of 24 securities was a transaction which it would have 25 done absent the Lehman business acquisition.	Page 121 1 KING - HIGHLY-CONFIDENTIAL 2 Q. Sure. 3 A. I mean, you just -- there was not 4 enough -- you know, the approximations and guesses 5 at value that we were attributing to the portfolio 6 and putting normal liquidation, normal orderly 7 liquidation value on assets that are supporting a 8 45 billion dollar loan, which, as I said, if you 9 had to suddenly sell, there would have been 10 tremendous deficiencies on that loan. You 11 couldn't have recovered it. 12 The fact that somewhere else in the 13 organization there would have been these 14 negotiations about where is there incremental 15 value to cover us for the massive risk that we are 16 taking on this repo facility, I would assume that 17 was the case, and that's why later on, 20th, 21st, 18 or whatever it was, we first start to see the 19 lists of unencumbered assets. 20 It was certainly of no surprise to me 21 that there had to be other places for value to be, 22 given how -- what a substantial transaction that 23 was. 24 Q. Well, you didn't participate in any 25 discussions between Lehman and Barclays on this

<p style="text-align: right;">Page 122</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 issue, right? 3 A. No. Again, all we saw -- 4 Q. You are just surmising? 5 MR. STERN: Let him finish. 6 A. What I am saying, I became aware there 7 were other assets and that we were then asked to 8 do the same process on that we had done with all 9 of the various categories, and it was of no 10 surprise to me at all that there was incremental 11 portfolio assets. 12 In fact, we would be very pleased, 13 because a -- even at -- in that time, even a 14 50 billion -- even if that portfolio really did 15 have a spot price, meaning a price that you really 16 could liquidate on a second, that the last trade, 17 the sum of the last trades observed was 50 billion 18 dollars, and you lent 45 billion dollars, so 19 that's a 10 percent haircut. 20 When we assess risk, we always say now 21 let's assume that every incremental time you 22 trade, you push the price down, and it takes you 23 however many days or weeks or years to be able to 24 sell everything, given a normal size that trades. 25 The likelihood that you would erode a 10 percent</p>	<p style="text-align: right;">Page 123</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 margin, even if that was the correct -- even if 3 that really was the sum of the last trades you 4 observed, would be very high. The likelihood that 5 you didn't recover the full amount of the loan 6 would be extremely high. 7 So one would have to assume, I would 8 have assumed that there was incremental value in 9 the transaction to Barclays for doing the 10 transaction, just because of the risk of that 11 facility. Obviously I didn't see the securities 12 until the weekend or so. 13 Q. And you didn't participate in any 14 discussions between Lehman and Barclays about a 15 search for additional assets over the weekend, 16 starting Friday, Saturday and Sunday? 17 A. No. 18 MR. STERN: Objection to the form as 19 to the time frame. 20 Q. My question then, starting on that 21 Friday, the 19th, through the weekend, you weren't 22 involved in any discussions between -- let me 23 reask it so I have a clear record. 24 A. Yeah. 25 Q. I am talking about Friday, Saturday</p>
<p style="text-align: right;">Page 124</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 and Sunday, starting on the 19th, you weren't 3 involved in any discussions between Lehman and 4 Barclays as to additional assets that were 5 supposed to be provided to Barclays over and above 6 the pool that you just previously talked about 7 that you received through the repo? 8 A. I don't remember the timing of it, 9 whether it was the Friday, Saturday, Sunday, 10 Monday or the Tuesday or anytime thereafter. 11 If I could delineate, discussions 12 about whether or not Barclays should receive 13 additional securities from Lehman, no, absolutely 14 not. That we were provided with lists of 15 additional securities, then yes, we were. 16 Q. OK. But for the purpose of doing the 17 assessment, the type of activities that you have 18 been describing all day? 19 A. Just to be able to -- yes. Someone 20 has to -- you know, someone has to provide us with 21 a list for us to be able to do what we are doing. 22 So you provide me a list, we will assess it and we 23 will hand it back to you. 24 Q. Am I correct to say you don't have any 25 specific knowledge about why you are being</p>	<p style="text-align: right;">Page 125</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 provided the list, you are just taking the list 3 and doing what you do within your group? 4 A. No, I can -- I understand why it 5 should have been the case that there was 6 incremental assets somewhere to provide collateral 7 for this loan or for this transaction, but I'm 8 surmising that just because of my commercial 9 knowledge. 10 Yes, I did see lists of securities 11 that were provided to us. I don't really remember 12 them arriving over the weekend, I have to say. 13 Well, I remember they were -- by the end of the 14 weekend we saw what was supposedly a list of 15 unencumbered assets. Not a complete list but a 16 list of unencumbered assets. But the negotiations 17 or why or for what this was in lieu of, no. 18 Q. Did you understand this list of 19 unencumbered assets to be additional securities 20 for the repo loan? 21 A. No. 22 Q. You understood it to be separate and 23 apart from the repo transaction; is that right? 24 A. To me -- you know, there was a repo 25 transaction, but the reason for the repo</p>

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1 KING - HIGHLY-CONFIDENTIAL 2 transaction, as I said, was not in isolation of 3 the fact that we were acquiring, you know, other 4 things. 5 So I never really think of them as 6 separate. I thought of it as being Barclays is 7 having to put money out of the door against what I 8 know is a portfolio of assets that have an 9 estimated value that hopefully is more than the 10 loan, but that doesn't look like a very good 11 trade. So therefore, there has to be other stuff 12 that's going on. 13 But that's not part of our 14 responsibility. 15 Q. I guess this is what I am driving at. 16 You told me before that on that Friday, you 17 received 10 -- assets marked at 10 billion dollars 18 that you hadn't expected? 19 A. Yes. 20 Q. Is the additional assets that Lehman 21 provides over that weekend the result of Barclays' 22 dissatisfaction with the securities it had been 23 provided under the repo? 24 A. I don't know. Not to -- no, I 25 think -- no, not to the best of my knowledge. It	1 KING - HIGHLY-CONFIDENTIAL 2 was -- no, not to the -- I think it was another 3 list -- to us, it was another list of securities 4 that was part of -- I mean, I think by the Friday, 5 it must be the case that I had seen the draft of 6 the asset purchase agreement, so I -- you know, I 7 knew that there was a list of these securities 8 that were in this repo facility, but there were 9 lots of other things that were subject to the 10 purchase agreement as well. 11 So the fact that from time to time 12 somebody would ask us, by the way, also there are 13 these other things that look like things, Stephen, 14 that you would be able to put an estimate of value 15 on, and ultimately you will end up risk managing, 16 that would come to me. Then I would respond to 17 them, and I would assume that this was part of 18 something that was a -- the repo transaction was 19 just a subset of a liability and an asset that 20 makes up the larger transaction. 21 Obviously later on, I saw the 22 acquisition balance sheets and things, so I could 23 see that there were those pieces. So none of that 24 was a surprise to me. But I wasn't part of the 25 conversations.
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1 KING - HIGHLY-CONFIDENTIAL 2 Q. OK, very good. 3 MR. STERN: Should we take a quick 4 lunch break? 5 MR. HINE: Sure. Let's go off the 6 record. 7 (Recess)	1 KING - HIGHLY-CONFIDENTIAL 2 AFTERNOON SESSION 3 1:14 p.m. 4 BY MR. HINE: 5 Q. Good afternoon, Mr. King. I wanted to 6 go over a few documents with you based on some of 7 the things you have already talked about, but I 8 did want to start off with two topics. 9 First is the -- you have described how 10 you received a bunch of assets through Lehman 11 transactions on Friday, and then later on you 12 received additional assets. 13 Eventually, these assets get booked 14 into Barclays' system, and is it correct that 15 Barclays intended to conduct an orderly 16 liquidation of those assets over time? 17 A. On the -- it wasn't until later that 18 we concluded that that's what we would do or how 19 we would do it. 20 Q. Do you know how much later? Do you 21 have a time frame in mind? 22 A. Days and weeks and -- days and weeks. 23 Q. Is it fair to say probably sometime 24 before the end of September of '08? 25 A. We had been -- we had already disposed

<p style="text-align: right;">Page 130</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 of some by the end of September. Prior to the</p> <p>3 19th, it had been -- my expectation and</p> <p>4 understanding was that we would -- there were</p> <p>5 going to be a number of teams that were coming in</p> <p>6 from Lehman that would be integrated with the</p> <p>7 relevant Barclays team.</p> <p>8 There was work that was going on -- it</p> <p>9 was a very fluid environment, very, very fluid</p> <p>10 environment. There was work that was going on in</p> <p>11 the front office trading teams to interview and</p> <p>12 integrate people, and it was our working</p> <p>13 assumption -- this is only really coming into play</p> <p>14 in the middle of that week -- that we would</p> <p>15 facilitate the booking and on boarding of the</p> <p>16 assets, and then we would be pushing them back</p> <p>17 into the relevant trading teams.</p> <p>18 And at various times, the expression,</p> <p>19 you know, well, these are the guys that are going</p> <p>20 to be managing the assets, was used to refer to</p> <p>21 the Lehman people or the Barclays people. They</p> <p>22 would go to a desk.</p> <p>23 As it transpired, as we went through</p> <p>24 the following days and weeks, we started to</p> <p>25 conclude that markets were much, much more broken</p>	<p style="text-align: right;">Page 131</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 at a very, very fundamental level than we had</p> <p>3 really anticipated. And "we" being I think -- I'm</p> <p>4 not even talking about my group or Barclays, but</p> <p>5 "we" meaning financial markets and the general</p> <p>6 public at large hadn't quite realized how broken</p> <p>7 it was.</p> <p>8 And we, very close to what was</p> <p>9 happening at Lehman, could see that some things</p> <p>10 are irreparably damaged here, and the ability to</p> <p>11 unwind quickly some of these assets is going to be</p> <p>12 very, very difficult.</p> <p>13 And at that point I suggested, and</p> <p>14 this was then subsequently taken up, that rather</p> <p>15 than just push the assets back into the trading</p> <p>16 desks, even with segregated books in the trading</p> <p>17 desks, that we ought to manage them at a more</p> <p>18 coordinated -- in a more coordinated and central</p> <p>19 way and liquidate them in a more orderly fashion.</p> <p>20 But that really was not -- and you may</p> <p>21 remember I said earlier on that my -- our group,</p> <p>22 my group PMTG changed at some point around the</p> <p>23 time. We actually brought additional resources</p> <p>24 into PMTG to facilitate that and took some</p> <p>25 responsibility for liquidating of the assets over</p>
<p style="text-align: right;">Page 132</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and above the assets that we were originally</p> <p>3 managing.</p> <p>4 So there was a bit of a change in</p> <p>5 plan, you know. There wasn't much of a plan, but</p> <p>6 the understanding changed over those -- over about</p> <p>7 ten days or so.</p> <p>8 Q. So the assets that you received from</p> <p>9 Lehman in different tranches never were parceled</p> <p>10 out to the trading desks?</p> <p>11 A. They were parceled out -- some of</p> <p>12 them, they were parceled out so that the trading</p> <p>13 desks could originally review them. We further</p> <p>14 refined that to say certain of the assets will be</p> <p>15 parceled out and managed by the respective trading</p> <p>16 desk and some of them won't be.</p> <p>17 So it is a -- it is not as simple and</p> <p>18 straightforward a division as all assets were</p> <p>19 handed down to the respective trading desks. Some</p> <p>20 of them were. Some of them we sold to the</p> <p>21 respective trading desks so they could go out and</p> <p>22 sell them as quickly as possible.</p> <p>23 Otherwise, PMTG retained the risk</p> <p>24 management responsibility but was facilitated by</p> <p>25 the respective trading desk in the liquidation,</p>	<p style="text-align: right;">Page 133</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 and others we just kept and managed within our</p> <p>3 group and brought additional resources in to</p> <p>4 facilitate the management.</p> <p>5 So there was three categories.</p> <p>6 Q. When you say facilitate the</p> <p>7 management, meaning your group liquidated --</p> <p>8 A. Managed and liquidated it.</p> <p>9 Q. So has this orderly liquidation now</p> <p>10 been completed?</p> <p>11 A. No. I think also to suggest --</p> <p>12 "orderly liquidation" to me tends to convey -- it</p> <p>13 is a term that's often used when trying to</p> <p>14 describe how -- what type of valuation you would</p> <p>15 attribute to a particular asset. I don't think</p> <p>16 anyone ever used the term "orderly liquidation" to</p> <p>17 describe particularly what we were doing. It was</p> <p>18 liquidation.</p> <p>19 Q. OK, fair enough. I think I was using</p> <p>20 it because I saw it in one of the documents here.</p> <p>21 But you say sometime in September the</p> <p>22 approach changed. Is the approach still to this</p> <p>23 day to liquidate all the assets that were acquired</p> <p>24 by Lehman or just select types of assets or</p> <p>25 categories?</p>

<p style="text-align: right;">Page 134</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. It was, it was never -- it was never 3 described to me that the intention was to retain 4 for longer than was necessary or sensible any of 5 the assets.</p> <p>6 Q. So is there a way to assess now, 7 several months later, whether Barclays made money 8 on this pool of assets it received from Lehman?</p> <p>9 A. We made -- some assets were sold at or 10 above their marks, and many of them were sold 11 below, and many of them are still there.</p> <p>12 Q. Let me ask it differently. Has 13 Barclays undertaken some kind of after-action 14 assessment or any kind of assessment or review to 15 see if, in fact, they made money on the securities 16 and other assets that they acquired from Lehman?</p> <p>17 A. No.</p> <p>18 Q. You have never seen any reports to 19 that effect or any kind of spreadsheets to that 20 effect?</p> <p>21 A. At various times, at various times, 22 more for management reporting purposes I think 23 than financial reporting purposes, we, my group or 24 Barclays had -- product control has attempted to 25 describe how much money was made or lost over a</p>	<p style="text-align: right;">Page 135</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 period of time on certain aspects -- certain 3 assets.</p> <p>4 A -- I think it was included, I think 5 it was included in a footnote to the year-end 6 financial statement, is the acquisition balance 7 sheet for Lehman. I don't remember whether it was 8 actually published or whether I just saw it and it 9 was somehow integrated into it. I think it was 10 published.</p> <p>11 You know, that report is a negative 12 goodwill number, is purportedly a profit of the 13 acquisition, but it includes many things that are 14 nothing to do with the assets that we have talked 15 about here because it includes items such as 16 goodwill, real estate, receivables, et cetera.</p> <p>17 So there was -- there is a statement 18 there about supposedly some number that is 19 attached to the profitability. But I think of 20 that as an accounting requirement report for 21 financial reporting purposes of the transaction.</p> <p>22 But that describes the valuation of 23 the securities according to a set of rules that 24 are influenced by accounting guidelines and rules 25 on a particular day. And I think the date that</p>
<p style="text-align: right;">Page 136</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 was picked was the 22nd.</p> <p>3 And a very sophisticated set of rules 4 were developed over the subsequent months that 5 would guide PWC and Barclays' product control and 6 finance to be able to be comfortable that it had 7 adequately come up with an asset value for these 8 assets and for other things that were -- so 9 including certain contingent claims that were 10 going to be included on the balance sheet.</p> <p>11 But it doesn't say anything there 12 about how much profit or loss was made on those 13 assets after that date, and it is an incredibly 14 difficult exercise to actually aggregate all of 15 that because of the three different places that I 16 described to you that the assets ended up.</p> <p>17 Some assets were sold to traders and 18 then they subsequently sold them. So there is a 19 P&L item, if you like, that turns up in the 20 negative goodwill that's on that acquisition 21 balance sheet. There is a P&L that we experienced 22 between what was the price that PMTG seemed to 23 acquire the assets and where it sold them to the 24 desks, and then there is another item where the 25 desk sold it to the street and there are gains and</p>	<p style="text-align: right;">Page 137</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 losses on the various hedges, and I'm using that 3 word in the way you were using "hedges," the 4 various instruments that were used to try to risk 5 manage while the assets were in situ in the P&L. 6 There is the gains and losses on those.</p> <p>7 So I have never seen a number which 8 says how much did we make.</p> <p>9 Q. I think I understand what you are 10 saying, but the disclosure that was made in the 11 financial statement is a snapshot of the gain on 12 acquisition, right? It doesn't even purport to 13 cover gains that might have taken place later as 14 to those securities?</p> <p>15 A. Or losses, more importantly losses, 16 right.</p> <p>17 Q. So my question is, I see the snapshot 18 of the gain on acquisition of about 4.2 billion 19 dollars. Has Barclays undertaken any efforts 20 after that to assess what we are talking about, 21 the possibility that it gained or lost on all the 22 securities it acquired?</p> <p>23 A. Not in an isolated way. Clearly, all 24 those gains and losses are part of the normal P&L 25 that all of the desks report, but there isn't a</p>

<p style="text-align: right;">Page 138</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 line item -- 3 Q. OK. 4 A. -- that says P&L related to Lehman 5 securities. 6 Q. I understand that. I was just -- as a 7 layman, outside the organization, I would think 8 someone would have said, hey, did we make any 9 money on that pool of securities we bought last 10 year? 11 A. There is certainly -- people 12 frequently asked, but it is not easy to answer 13 because -- and it is a tremendous amount of work, 14 so no one bothered to answer it. 15 Q. Just to trace them in all the places 16 they went? 17 A. Trace them, and there were some 18 aspects of it that had to be done so there was 19 adequate reporting in trading statements and 20 year-end statements and things, but -- and I don't 21 think it is ever, you know, that -- the 22 acquisition gain that you are referring to doesn't 23 ascribe gains or losses on the securities. It 24 just talks about on everything that was subject 25 to -- was either -- just the difference between</p>	<p style="text-align: right;">Page 139</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 the assumed assets and liabilities of the 3 transaction. 4 Q. Were you involved in helping provide 5 information that would go into the assessment of 6 that initial gain on acquisition? 7 A. Yeah, once again we could -- the 8 estimated values for the securities was provided 9 by my desk to finance. 10 Q. And you mentioned some stringent rules 11 that were applied in that regard? 12 A. That's somewhat after the fact. As I 13 described it, you know, it is not exactly a 14 normal -- as much as possible Barclays, given the 15 environment we were in, was attempting to follow 16 as many of the normal rules and procedures that it 17 would do for an acquisition, even though this one 18 was obviously extremely large. 19 So, you know, initial estimates of 20 what that balance sheet would have looked like 21 were on -- in relation to the securities, were 22 derived from my desk's estimates, where they were 23 available, of the values for the securities. 24 With time, obviously the individual 25 desks that were receiving the assets marked the</p>
<p style="text-align: right;">Page 140</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 assets. I don't think we -- I don't think we ever 3 went back to remark -- we didn't really -- my desk 4 didn't really care very much about what the mark 5 was on the 19th in many respects. We cared about 6 what it was for a certain date that we took a 7 snapshot, so that we could report day two P&L, or 8 day one P&L, day two P&L, day two P&L being 9 everything after -- all the P&L associated with 10 the assets after they have been booked. 11 So we cared about a particular 12 snapshot, and I think we took a number that was 13 closer to -- a date that was closer to the end of 14 the month for that purpose. End of September. 15 And then we looked at P&L changes from that date 16 on individual line items. Not aggregate but just 17 individual line items. 18 Q. That was your best estimate at the 19 time -- 20 A. At that time, and then that continued 21 to be refined as we found out more about the 22 securities or passed them out to the respective 23 desks or sold them or what have you. 24 Q. Sure. But for financial reporting 25 purposes, that was your best estimate at that</p>	<p style="text-align: right;">Page 141</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 time? 3 A. That was the best estimate. We 4 provided the best estimate, and then product 5 control started to -- as things started to 6 stabilize, product control took over its normal 7 process about starting to think about how it would 8 prepare its financial statements, and then 9 therefore, obviously our information was an input 10 to that, but it was only an input, and they used 11 multiple sources, I think, to construct the 12 assumed valuations for the 19th. 13 (Exhibit 390-B, document Bates stamped 14 BCI-EX-S 52667 through 68 with attachment 15 marked for identification, as of this date.) 16 Q. Mr. King, handing you a copy of a 17 document marked as Exhibit 390-B, which has Bates 18 ranges BCI-EX-S 00052667 through 668, and then 19 there is an attachment which is produced in native 20 form which we have attached to the exhibit. 21 It is a Monday, September 22nd e-mail 22 entitled "Long Island Draft Balance Sheet/Goodwill 23 Calc." Do you see that? 24 A. Um-hm. 25 Q. After you have had a moment to review</p>

<p style="text-align: right;">Page 142</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 it, I would like to ask you a question about it. 3 MR. STERN: Have you read the e-mail? 4 THE WITNESS: Yeah, I will come back 5 to that in one second. 6 A. Yes. 7 Q. My question is, do you see the entry 8 on the first covering e-mail -- I understand that 9 you are not a party to that e-mail, but it is 10 discussing the acquisition balance sheet, and the 11 fourth bullet down refers to the "2.83B valuation 12 adjustment is S. King's first cut only." Do you 13 see that? 14 A. Yes. 15 Q. And if we refer to the last page of 16 the document, I see an entry for 2.83 billion. Do 17 you know what -- is that the 2.83 adjustment, 18 first-cut adjustment that the e-mail is talking 19 about? 20 A. Yes. 21 Q. Do you know what -- can you explain to 22 me what that valuation adjustment is? 23 A. Yes. It is linked to your previous 24 questions. There has to be -- and this changed 25 over time. There has to be -- this concept, and</p>	<p style="text-align: right;">Page 143</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 we have touched on it a few times during the -- 3 through the course of the conversations, of there 4 being a value, a valuation, seems to imply that 5 there is a single price, but of course that isn't 6 actually the case. 7 When you are referring to orderly 8 liquidation -- for example, I think the e-mail 9 that we had in front of us earlier was that the 10 CMO guys told me he was told to give two months 11 orderly liquidation in the bid in comp. So there 12 he has used -- you can see he is being given an 13 instruction. That is actually a quite formal 14 instruction. 15 An orderly liquidation mark is 16 something that people understand to mean -- that 17 was on Exhibit 389-B. That was something that 18 people sort of understand to mean if there is -- 19 sometimes we come into work in the mornings and we 20 get a phone call saying, will you bid on the 21 following. And if we have got enough capital and 22 we feel like doing it, then we may say yes, and 23 the guy may want to sell us the stuff for 24 30 million dollars and we may bid 10. And if he 25 really needs a bid, then he will hit our 10.</p>
<p style="text-align: right;">Page 144</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 I wouldn't describe that as an orderly 3 liquidation. And in fact, we have seen a lot of 4 that during the course of the last two years, of 5 course, as so many counterparties have defaulted 6 on obligations and their assets have been seized 7 and liquidated. 8 Under normal circumstances it is not a 9 straightforward process. In marking our books, we 10 have to try to assess whether or not we are 11 supposed to use those pricing points in marking 12 assets. 13 They are clearly actually where 14 something just traded. Something was sold from 15 one party to another party at that price. 16 Somebody was willing to trade. But they weren't 17 really willing to trade -- it wasn't particularly 18 by design that they traded there, they had to 19 trade, it was sold. Maybe it was seized and sold 20 or they needed to sell it to create liquidity, but 21 it wasn't exactly orderly. 22 So on that page 389-B, where it says 23 "orderly liquidation mark and bidding comp," 24 that's kind of -- it's trying to highlight there 25 really is a little bit of a difference between the</p>	<p style="text-align: right;">Page 145</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 two of those. 3 We mostly mark our positions as if 4 there was an orderly disposal. Not necessarily 5 that that's what we plan on doing with them. We 6 might hold them, might sell them. There is lots 7 of things we try to do, but we try to keep that 8 concept in mind. 9 At this stage, on Monday, the 22nd, 10 this balance sheet, the valuation adjustment was 11 equal to the difference between -- I think it was 12 the 45 point -- Thursday close. The 13 45.18 billion, which is the Thursday -- this is 14 the inventory Thursday close, 45.18. That would 15 have been, if memory serves, the BoNY marks for 16 the portfolio. 17 And -- there is a little bit of P&L in 18 here. I think that is probably carried, and then 19 the valuation adjustment on this day, this isn't 20 necessarily on subsequent balance sheets, but on 21 this day would be equal to the difference between 22 the BoNY -- I think the BoNY marks and our current 23 best guess, based on everything that we have got 24 available to us, of the orderly liquidation mark. 25 So it is trying to get from one number</p>

<p style="text-align: right;">Page 146</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 to another number. With time, both of those, the 3 definitions of those were clarified, but that was 4 what this was on that date, and that's why Gary 5 refers to it as valuation adjustment, as S. King's 6 first cut only. 7 It is not an upper-case term, 8 valuation adjustment. It was just a term that we 9 started to use to be the difference between where 10 there was some observable marks that could have 11 been the BoNY marks and where we were saying we 12 would probably book things. Again, it was to try 13 to make the difference between the day one and day 14 two P&L. 15 Q. This is Monday, the 22nd. That's the 16 date on which the financial statement ultimately 17 says, let's report the acquisition as of on that 18 date, right? 19 A. Yes. 20 Q. If you look at 5, I don't know if that 21 helps in your answer. I'm not sure you saw that. 22 A. OK. 23 Q. So that confirms that the -- 24 A. That's actually -- so we put that -- 25 it is in there, initial estimate of the adjustment</p>	<p style="text-align: right;">Page 147</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 to Barclays' marks, BoNY prices and Barclays' 3 marks. That's precisely that. 4 Q. The BoNY price of 45 billion is the 5 BoNY marks assessed on what pool of assets? 6 A. What is -- I don't know if this is 7 clear on this. It is just inventory on this day. 8 Q. Maybe I could ask a clarifying 9 question while you look at that. 10 Is the 45 -- my question is, is the 11 45.18 the BoNY marks for the assets you received 12 from the repo, or does it also include other 13 assets that you received later? 14 A. That's what I was just trying to 15 check. There is a version of this where they are 16 separated. But I don't think we were able to do 17 that as early as the 22nd. 18 Q. That's the Monday following. 19 A. Yeah. Because I can only see one -- 20 45.18 inventory, 15c3, financial assets. 21 Yes, I think it is 45.18. It is just 22 whatever we -- at this point whatever we knew of. 23 Q. If you read further down on that 24 column, you will see a reference to 15c3 assets, 25 so that's a separate asset that you received over</p>
<p style="text-align: right;">Page 148</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 that weekend, correct? 3 MR. STERN: Objection to the form. 4 Q. If you can describe that, that's fine. 5 A. On the 22nd, I wouldn't even have 6 known what 15c3 meant, and 15c3 asset wasn't -- is 7 not a security or anything that we -- it is just a 8 line item on here. It is not an asset -- it is 9 not a tradable asset. 10 Q. OK. And the 7 billion in cash, is 11 that the -- in the next, next line item, 7 billion 12 in cash, is that the 7 billion that came over to 13 Barclays as a result of the repo transaction? 14 MR. STERN: Objection to the form. 15 You can answer. 16 A. The cash, the 7 billion was the cash 17 item on here. Actually, I have seen -- obviously 18 I've seen this before and various subsequent 19 iterations of it. But we didn't prepare this. 20 So -- 21 Q. "We" meaning -- 22 A. My desk. So we didn't have any input 23 to anything that was -- you know, we would provide 24 Gary numbers, and we wouldn't have had any input 25 below inventory, because they are not securities.</p>	<p style="text-align: right;">Page 149</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Now, the 7 billion dollars is the 3 cash, but I know that the 7 billion dollars is the 4 cash that we thought we had in relation to the 5 nonsecurity-based collateral for the repo 6 facility. 7 Q. If I look on here, I don't see -- 8 well, could you tell me if there is any entry on 9 here that covers what we have been calling 10 unencumbered assets or the clearance box assets, 11 or have they not yet come over to Barclays? 12 A. I -- as I say, there must be a hundred 13 of these balance sheets that were, you know, as 14 product control refined them. I don't know how 15 many I have seen, but I've seen a few of them 16 between here and the end of the year. This is an 17 early version of it. And so you will have to 18 forgive me if I can't remember exactly the 45.18. 19 Inventory on the Friday morning, I 20 think from memory, is everything that we thought 21 we received at the -- by the date of -- by some 22 date on which we provided -- I don't know what 23 date -- I don't know what date Gary is producing 24 this, so it might have been this is from the 25 Friday numbers or Saturday numbers or Sunday</p>

1 KING - HIGHLY-CONFIDENTIAL 2 numbers. It is probably not the Monday numbers, 3 because it is produced on Monday. I suppose it is 4 produced late on Monday. 5 But it doesn't separate out the 6 unencumbered assets that we had already received 7 by that point. It doesn't separate it out. So I 8 think that everything that we had received to this 9 point was in that number. 10 Q. Back to the 2.83 valuation adjustment. 11 How did you come up with that 2.83 number? Is 12 that the top-down analysis we talked about 13 earlier? 14 A. No. We never came up, so we, my group 15 never came up with 2.83. 2.83 is a difference 16 between a set of marks and our marks. So it is 17 not like I come up with -- it is not that I come 18 up with 2.83. We would come up with on here 42.55 19 as a -- on the spreadsheet or the inventory, and 20 say we've marked all the individual line items, 21 and then product control will tell us at that -- 22 based on all your individual marks or your best 23 estimate here -- I think by this date we were 24 still working on spreadsheets -- we estimate that 25 what we have got is worth 42 and a half billion	Page 151 1 KING - HIGHLY-CONFIDENTIAL 2 dollars. 3 Then they would compare that to the 4 marks for some of the inventory at the BoNY marks, 5 and that's what that last paragraph says. It said 6 the trades are initially booked at BoNY prices, so 7 no one is calculating the 2.83. The 2.83 is the 8 difference between the BoNY marks and the desk 9 marks. 10 Q. And the desk marks are -- Barclays is 11 going CUSIP by CUSIP and putting a mark in for -- 12 A. Where possible, yes. Where possible. 13 And it is the best guess by the desk, by my desk 14 using input from as many other sources as we 15 possibly can of an orderly liquidation mark, not 16 where we would -- if we were to -- if we had 17 turned around and asked somebody to bid on this 18 day for 42 and a half billion dollars worth of 19 securities, it would have been 30-something 20 billion. 21 Q. I understand that. I'm just trying to 22 understand the origin of the marks that Barclays 23 put on it. Did Barclays adopt marks that Lehman 24 had put on these assets? 25 A. No.
Page 152 1 KING - HIGHLY-CONFIDENTIAL 2 Q. I have heard testimony in other 3 instances where Lehman valued those assets at 4 42.9. This appears to be very close to the 5 Barclays marks. Did you have any consideration or 6 discussion between Lehman and Barclays as to their 7 own marks? 8 A. Well, some of the marks were -- we 9 actually used to make the unfunny joke that 42 and 10 a half versus 49, you know, or 50 versus 48 and a 11 half, it is kind of close. It is -- that's half 12 of a billion dollars, so that's a gap. That's 13 500 million dollars of, you know, rounding. 14 And that would have come from more of 15 a -- it just sort of highlights just how much 16 uncertainty there was. You would be very 17 surprised if there was absolutely no relationship 18 between the BoNY marks, the JP marks, the Lehman 19 marks, the Barclays estimates. If they weren't of 20 some similar order of magnitude, you know you have 21 a major failing of a control system somewhere. 22 But still, I don't -- we never really 23 needed to use the Lehman marks, other than -- the 24 only place where we used the Lehman marks was 25 where we had no idea what the security was other	Page 153 1 KING - HIGHLY-CONFIDENTIAL 2 than a CUSIP, some generic name, and the Lehman 3 mark, then we would have said we will value it at 4 a discount to the Lehman mark because we have 5 nothing else to go on. It could be worth nothing. 6 Many of them were worth nothing. Not 7 because Lehman had -- bear in mind, the Lehman 8 marks were from days -- they were old, they were 9 what we call stale. Many of them were -- I think 10 most of the stuff we were looking at earlier was 11 on the 12th, which was before the bankruptcy of 12 Lehman Brothers Holdings, and even during that 13 previous week, most of the traders were out -- at 14 Lehman were more worried about their own futures 15 than necessarily marking their books, and markets 16 were already very, very distressed. 17 So the idea that those markets were 18 good on -- those marks were good on the 22nd after 19 two bankruptcies and Merrill being acquired by -- 20 or being bailed out, is -- there is a 21 tremendous -- you know, the value of them is 22 that -- so there were cases where we said -- and 23 some of them were appropriately marked by Lehman 24 but worthless to Barclays. 25 A good example would be there were

<p style="text-align: right;">Page 154</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 warrants that were in the repo facility, I 3 remember roughly it was 300 million dollars as a 4 good example. 300 million dollars issued by 5 Lehman referencing other credits. 6 Now, those, as long as Lehman exists, 7 are worth roughly the amount of the reference 8 credit, but the moment that Lehman defaults, they 9 are worthless. So Lehman had them appropriately 10 marked where they would have traded them prior to 11 Lehman's insolvency. They are just called fixed 12 income security on a schedule that we had, and 13 they are actually worthless, and there were 14 instruments like that in the repo facility. 15 Now, we wouldn't have known that until 16 days, many days later. 17 Q. So this 2.83 adjustment is derived 18 from comparing the BoNY marks to Barclays' own 19 marks? 20 A. PMTG's current best guess at an 21 orderly liquidation. 22 Q. At that particular date? 23 A. On that particular date. It doesn't 24 say if the other bidding -- you know, that's an 25 orderly liquidation as opposed to a bidding comp</p>	<p style="text-align: right;">Page 155</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 liquidation. 3 MR. STERN: Should we take a short 4 break? 5 THE WITNESS: Sure. 6 (Recess) 7 BY MR. HINE: 8 Q. Mr. King, I am going to hand you a 9 copy of a document marked as Exhibit 86-B. After 10 you have had a minute to look at it, I would then 11 like to ask you a couple of questions, first 12 regarding whether you have ever seen this document 13 before. 14 MR. STERN: Take your time and look at 15 it, and that's the question: Have you ever 16 seen it before? 17 THE WITNESS: OK. 18 Q. Have you ever seen this document 19 before, Mr. King? 20 A. I've never seen the document before. 21 I don't think I have seen the spreadsheet before. 22 Q. Does it look like anything else you 23 have seen before? 24 A. Unfortunately, it looks like a 25 tremendous number of things I have seen before,</p>
<p style="text-align: right;">Page 156</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 but I don't think I have -- I don't know -- I 3 don't really recognize this one. 4 Q. Do you have any understanding or can 5 you give me your best -- withdrawn. 6 Do you have any understanding of what 7 this document is modeling? 8 MR. STERN: Objection to the form. 9 Calls for speculation. 10 Q. Attempting to model? 11 MR. STERN: You are asking for him to 12 guess or -- 13 MR. HINE: Yeah. 14 MR. STERN: I object to guessing. 15 Q. You can answer the question. 16 A. Well, it describes PMTG and it -- and 17 the cumulative amounts are the same as the sheet 18 we looked at before. Slightly different. So it 19 looks like -- it looks like many reports that were 20 produced around this time that are of a population 21 of securities that in some way are linked back to 22 that, but I don't know this -- especially not 23 with -- without any date or anything on it, it is 24 just one of any number of spreadsheets. 25 Q. Do you know -- can you tell by looking</p>	<p style="text-align: right;">Page 157</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 at it, the form, who, which department within 3 Barclays might have prepared this? 4 A. Only by the fact that it talks about 5 PCG values, as well as PMTG, and -- I would think 6 it is a -- well, it is a reconciliation of 7 something with something, and it looks -- it 8 clearly has a similar set of securities as the 9 previous -- as 39-B, I think it is, but what it 10 was trying to achieve or who prepared it -- it 11 could be either our desk or PCG. It would have to 12 be one of the two. 13 Q. Have you ever heard of anything 14 referred to as PCG liquidity value? 15 A. Isn't that just -- 16 Q. That's the column heading for column 17 F. Do you see that? 18 A. Isn't that just D minus E? 19 Q. It very well could be. I'm curious if 20 you ever heard the term used, "PCG liquidity 21 value." 22 A. No. 23 Q. Is that -- do you see the column 24 marked E which says "MV09/22 with bid-offer"? Do 25 you see that column?</p>

<p style="text-align: right;">Page 158</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. Yes. 3 Q. Did your department undertake any 4 efforts to, on or around 9/22, to solicit bids or 5 offers for these types of securities? 6 A. No. 7 Q. Did you have any idea of where that, 8 the entries in that column would have come from? 9 MR. STERN: Objection to the form. 10 You can answer. 11 A. I -- I would -- I am -- I would be 12 very surprised if column E -- column E, market 13 value 09/22 with bid offer, is a term that we in 14 PMTG -- those could be -- they could have come 15 from PMTG. They might have come from an aggregate 16 of other places. 17 I would think they came from PMTG, and 18 as far as I can see, F is just D minus E. 19 Q. OK. Do you see on the left-hand 20 column there appears to be a list of various 21 categories of securities? Do you see that? 22 A. Yeah. 23 Q. Below that, PMTG and then another 24 entry for PMTG2. Are those -- other than being 25 the initials for your department, would you --</p>	<p style="text-align: right;">Page 159</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 could you -- do you have any idea what securities 3 are being pooled in those entries? 4 MR. STERN: Objection to the form. 5 A. No. I mean over there -- you say this 6 is on the 22nd? 7 Q. I don't have a date for it. I see the 8 entry -- well, the title at the top appears to be 9 22 September. 10 A. Oh. 11 MR. STERN: The question is, do you 12 have any idea what securities are being 13 pooled in those entries. That's the 14 question. 15 A. I.17 billion. I think. I would just 16 be guessing. 17 Q. Don't know? 18 A. No. I mean I would be guessing rather 19 than I know. 20 Q. OK. Mr. King, I would like to walk 21 through a couple of documents here just to ask you 22 some specific questions of those documents. 23 The first one, I am going to hand you 24 what was previously marked as Exhibit 302-A. It 25 is very thick. I don't want to ask you about the</p>
<p style="text-align: right;">Page 160</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 whole document, I just want to ask you about the 3 cover e-mail. But take your time to review 4 whatever you need to review. 5 It appears. This is dated Wednesday, 6 the 17th. It appears that you are providing 7 comments to the asset purchase agreement; is that 8 correct? 9 MR. STERN: Objection to the form. 10 Q. Let me rephrase. 11 What is this covering e-mail? 12 A. It is an e-mail from me to Patrick, 13 Mike and Jonathan. It is called asset purchase 14 agreement comments. And those are comments to the 15 asset purchase agreement that I would have 16 provided to them. 17 Q. OK. Do you recall providing comments 18 to the asset purchase agreement? 19 A. I now do. But I would have forgotten 20 about it otherwise. 21 Q. OK. I guess my first question: The 22 agreement is signed on the 16th, so why are you 23 providing comments the day after it is signed? 24 A. I don't know. On that, I -- don't 25 forget, to me, I then didn't know -- until you</p>	<p style="text-align: right;">Page 161</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 told me earlier today that there was an agreement 3 signed on the Tuesday, I didn't know that. Or at 4 least I certainly didn't remember it. 5 Q. Why would you be sending these 6 agreements to Mr. -- these comments to Mr. Cox? 7 Do you recall? 8 A. No. 9 Q. Do you see in the first entry it talks 10 about purchase assets, and the third sentence in 11 that entry, entry number one, says, "Can 12 securities be sold to LBI without approval at a 13 discount to current mark?" Do you see that? 14 A. Yeah. 15 Q. Do you recall why you were making that 16 comment? 17 A. No, though reading it in its entirety, 18 it also says, "Are hedges put on by LBI after the 19 agreement is signed included? Any limits or 20 restrictions?" 21 So on the 17th, you know, on the 17th 22 is before we got into the repo. This is the -- 23 these are -- these are commenting on something 24 before we actually -- not on the final form of the 25 transaction.</p>

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1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 Q. Sure, it is before the repo.	2 well, 7 says, "Are hedges put on by LBI after the
3 A. It is before the repo.	3 agreement is signed included? Any limits or
4 Q. Right.	4 restrictions?"
5 A. So as a structurer of -- being	5 Q. Right.
6 familiar with structured credit transactions, both	6 A. So I am saying, both of those seem to
7 of those comments read that we were obviously very	7 infer that -- and this would be a sensible comment
8 worried, our desk was very worried that given the	8 for me to be worried about if there is a portfolio
9 distress in the markets at the time, that if	9 of assets and I put a value on them, if somebody
10 things were just sold into the open market, that	10 sells those assets or manages those assets after I
11 they would be sold at tremendous discounts to	11 think I am exposed to them, I have no control over
12 their marks.	12 whether or not they would do something stupid. I
13 Even though they are marked in this	13 mean it is LBI.
14 orderly liquidation, if someone started selling	14 Q. I understand that, but whose approval
15 them, then you would crystallize phenomenal loss,	15 are you talking about there in that sentence?
16 and both of these comments seem to suggest that at	16 A. I don't remember. This is -- this
17 the time I was worried that we didn't have -- as a	17 e-mail relates to a form of transaction that
18 risk manager looking at how were we going to	18 didn't happen, so there was no ongoing involvement
19 control the management of the assets on an ongoing	19 of LBI, where LBI had people in this portfolio.
20 basis.	20 I read that as a sentence that I typed
21 Q. You ask in number one can they be sold	21 as asking who does LBI have to get approval from
22 without approval. Whose approval are you talking	22 if they sell. .
23 about there?	23 Q. And has --
24 MR. STERN: Sold by LBI.	24 MR. STERN: In other words, Bill, sell
25 A. Sold by LBI. If you read 1 and 7 --	25 to somebody other than Barclays.
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1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 MR. HINE: I understand that.	2 A. I can't remember this in particular,
3 MR. STERN: I think that's what the	3 as I say, because it didn't happen. That's what I
4 confusion is.	4 read, as having put structured transactions
5 MR. HINE: I understand that.	5 together. I could assess a portfolio of assets
6 Q. Let me ask it differently. Are you	6 that you had and say, I think they are worth X,
7 referring in any way to court approval?	7 and then I inadvertently leave you with control to
8 A. I don't think so. I wouldn't have	8 do whatever you want to do with them, and the
9 known to refer to court approval.	9 first thing you do is go and sell them or put
10 Q. Are you referring in any way to board	10 pointless hedges on them, or you do something
11 of directors approval?	11 stupid.
12 A. I really don't think so, because if	12 Q. That's what you are worried about?
13 you read that -- these are pretty prosaic	13 A. I read that to mean that, and I would
14 comments. I would have to see where I was	14 think that therefore within -- if you think about
15 commenting -- you know, I would have to reread the	15 the scope of what I was responsible for, which is
16 document to see where I was specifically	16 valuation and risk management of a defined
17 commenting.	17 population, and I made the point earlier about one
18 But if I read, "Are hedges put on by	18 of the main things we are worried about is
19 LBI after the agreement is signed included? Any	19 population, I read that sentence -- I am having to
20 limits or restrictions?" So I seem to be	20 do this with a year -- on a transaction that
21 inferring what can LBI do to affect this	21 didn't happen with a year of time in between. I
22 population.	22 read that to mean can the population be affected
23 Q. You are wondering about what LBI can	23 without my control.
24 do between the signing of the agreement and	24 Q. I understand that.
25 closing of the agreement?	25 A. I think.

<p style="text-align: right;">Page 166</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. Now, when it says discount, do you 3 recall any discussions or having any understanding 4 at the time that Barclays was acquiring assets 5 from Lehman at a discount? 6 MR. STERN: Objection to the form. 7 Asked and answered. 8 A. I wasn't -- can you repeat that 9 actually. 10 (Record read) 11 A. As I pointed out before, I wasn't 12 party to any of those discussions. 13 I would have to also question 14 discounts to what. If it is a discount to BoNY's 15 marks or something, then I would say I was 16 assuming that my desk was viewing the assets as 17 not being worth the BoNY marks, but I don't know 18 if that's what you mean by discount. 19 Q. I'm just trying to exhaust your 20 recollection on discussions you might have heard 21 or understandings you might have heard about the 22 discussions between Barclays and Lehman. 23 MR. STERN: Your question? I don't 24 think there is a question. 25 Q. So let's reread the question. Do you</p>	<p style="text-align: right;">Page 167</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 recall any discussions or having any understanding 3 at the time that Barclays was acquiring assets 4 from Lehman at a discount? 5 A. So I wasn't party to the 6 discussions -- to any discussions, but I didn't 7 think that -- if I -- I would have to define 8 discount to what, and then if I -- if you said -- 9 if you had asked me the question did I think that 10 the -- we should pay less than where Lehman had 11 marked the securities on the 12th or where BoNY or 12 JP had marked them on the 17th, then I would say 13 yes. But I don't know whether that's what you are 14 asking. 15 Q. I understand your answer. I was 16 asking if you have any knowledge of the 17 discussions between Lehman and Barclays -- 18 A. No. 19 Q. -- as to that subject? 20 A. No. 21 Q. Can we skip ahead to the repo 22 transaction, which is the September 18 repo. 23 A. Yeah. 24 Q. Did Barclays provide a list of assets 25 that it wanted excluded from the repo or would not</p>
<p style="text-align: right;">Page 168</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 accept as collateral in the repo? 3 A. No. We didn't have any option on 4 the -- going into the -- we weren't -- "we" being 5 PMTG, weren't aware of any flexibility as to what 6 we were going to receive. That was part of the 7 problem, was we are going to take delivery of -- 8 remember you asked me the questions earlier about 9 what were you looking at, Steve, and I was 10 provided an inventory of securities on the 11 Wednesday, Thursday, that represented what I would 12 take delivery of. 13 And then it did happen to change by 14 Friday, but that was not what we were expecting to 15 receive, that list of securities. 16 Q. I am talking about before the Friday. 17 I'm talking about in the Wednesday, Tuesday, 18 whenever you are talking about the repo, were 19 there certain assets that Barclays would not 20 accept as collateral for that repo? 21 A. No. I -- on the Wednesday -- so the 22 Wednesday or Thursday we are analyzing the repo, 23 we just assumed we were taking delivery of 24 whatever was described to us as being in the repo 25 on the Thursday.</p>	<p style="text-align: right;">Page 169</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. Described to you by who? 3 A. In the schedule of securities 4 provided -- you asked me the question earlier as 5 to -- about a list of securities that was in the 6 repo, and I answered that I didn't know where it 7 came from, whether it was from operations or the 8 Fed or whoever, but somebody provided us a list of 9 securities on the Thursday, which is the list we 10 thought we would take delivery of. It wasn't the 11 list that we ultimately took delivery of, but it 12 was the list that we passed out to the various 13 traders. 14 We didn't think that we had any option 15 to pick and choose. 16 MR. STERN: Is that the list that you 17 referred to as having an hour and a half to 18 look at? 19 THE WITNESS: The hour and a half to 20 look at, yes. 21 Q. This might clarify the question. I am 22 going to hand you a document that was previously 23 marked as I43-B. It is an e-mail stream of which 24 you are not a party to until you get to page 2. 25 MR. STERN: Take a look at the whole</p>

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1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 thing.	2 Q. The 6.6 billion in mortgage?
3 Q. You can look at the whole thing. I am	3 A. Yeah. So once upon a time in the
4 just directing your attention to an entry on	4 first part of the week, we had suggested that we
5 page 2, which is an e-mail from you to David	5 wouldn't -- remember I said that we wouldn't take
6 Petrie, and it attaches something called excluded	6 all of the mortgage and mortgage-backed total. So
7 mortgage assets.	7 we divided it into two pools, the included and the
8 A. Right.	8 excluded.
9 Q. So take your time to look at the	9 So that e-mail from the 17th, unless I
10 document, but my questions are going to be	10 have made a mistake, it is an e-mail about the
11 primarily about that attachment.	11 assets that we wouldn't be taking out of the
12 A. OK.	12 mortgage and mortgage-backed securities.
13 Q. Have you ever seen this document	13 Q. So these are mortgages you are not
14 before?	14 going to take?
15 A. Yes.	15 A. These would be -- yes, that's the --
16 Q. Can you tell me what the attachment	16 well, it was -- in the early part of the week it
17 which is titled "Excluded Mortgage Assets 9/17/08"	17 was the list of securities which we were
18 is?	18 suggesting that we wouldn't take, "we" being my
19 A. Yeah. It is from the 6.5 billion	19 group, suggesting that we would rather not take
20 dollars of assets on the -- let me look here.	20 out of the total mortgage and mortgage-backed
21 Q. Is that the exhibit we first used in	21 total.
22 this --	22 Q. It is really nothing to do with the
23 A. Yeah, I think so.	23 repo. It has to do with the agreement to only
24 Q. I think it is --	24 take a portion of the mortgage-related securities?
25 A. 388-B.	25 A. That's correct.
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1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 Q. And then that agreement eventually	2 MR. STERN: 143-B.
3 changes toward the end of the week?	3 Q. 143 -- all right, 143-B, that's the
4 MR. STERN: Objection to the form.	4 schedule of mortgage-related securities that --
5 A. As I have said, I only know that what	5 A. Correct.
6 we were looking at at the beginning of the week	6 Q. -- Barclays did not want included in
7 didn't end up being the transaction. I don't know	7 the transaction, correct?
8 how the agreement changed.	8 A. Right.
9 Q. Let's talk about mortgage, the pool of	9 Q. And that was -- the counterpart to
10 mortgages-related securities itself. What	10 that is the securities that Barclays would allow
11 happened to that? Did Barclays end up getting	11 in the transaction, right?
12 those securities?	12 MR. STERN: Objection to the form.
13 A. Some of them, because some of them	13 A. I'm not sure what we mean by -- if we
14 were in the repo, but not all of them were in the	14 mean what we understood at the beginning of the
15 repo.	15 week my group was asked to assess as a portfolio
16 Q. And is the part that was in the repo	16 of assets that would end up being part of the
17 the securities that did not make it to this	17 purchase agreement, then this pertains to that.
18 schedule?	18 What ultimately happened was of course completely
19 A. I think I described --	19 different.
20 MR. STERN: Let me hear that question	20 Q. Well, that's what I am asking. What
21 again, please.	21 ultimately happened to the pool of mortgage-backed
22 MR. HINE: Let me try again. That was	22 securities?
23 confusing.	23 A. Some of them I don't know, because the
24 Q. You talked about this schedule, and I	24 388-B balance sheet was -- was not completely --
25 am talking about Exhibit --	25 you know, it -- what does he have, 65.1 -- it says

1 KING - HIGHLY-CONFIDENTIAL 2 65.16 billion dollars. That's on 388-B again, 3 65.16 billion. 4 So it is bigger than -- that number is 5 bigger than the repo facility which at any one of 6 the various marks that people had put on was less 7 than 50 billion dollars. 8 So not -- using your Venn diagram, not 9 all of these securities are in the repo facility. 10 MR. STERN: And you're pointing to 11 388-B. 12 THE WITNESS: I'm pointing to 388-B. 13 Q. I'm just trying to chase what happens 14 to the pool of mortgage-backed securities that 15 were originally marked as 60 billion on 388-B, 16 what happens to them by the end of the week? 17 A. I don't know on all of them. All I 18 know is some of them were in the list -- some of 19 them -- some of them were collateral that was 20 pledged to the Fed as far as my desk knew on the 21 Thursday, Wednesday, Thursday. 22 Q. The Fed? 23 A. Yeah. Some of them were in the Fed 24 facility. Every single -- a bank -- I mean every 25 single -- a balance sheet is made up of assets and	Page 174 1 KING - HIGHLY-CONFIDENTIAL 2 liabilities. Some of them -- all assets have to 3 be financed, especially for a broker dealer like 4 Lehman. So, many of these assets were financed by 5 the Fed. Therefore, they would have also been in 6 the Fed facility. 7 Q. Right. 8 A. But there is 65 billion of assets 9 here, so they couldn't all fit in the Fed 10 facility, which was only 50 billion. 11 Q. I understand. 12 A. Some of them weren't even in what we 13 thought was the Fed facility on the Wednesday, 14 Thursday. 15 Q. OK. 16 A. So some of them were just gone. 17 MR. STERN: But he is asking you about 18 Exhibit -- the list on Exhibit 143-B. 19 THE WITNESS: Yeah. 20 MR. STERN: What happened to those. 21 Q. No, I am asking the pool of securities 22 on 388-B -- 23 MR. STERN: You didn't ask that. 24 MR. HINE: Yes, I did. 25 Q. It was originally marked at
Page 176 1 KING - HIGHLY-CONFIDENTIAL 2 6.5 billion, and you were describing to me that 3 some of that made it into the repo, as I 4 understand it. 5 A. Some of them were in the -- some of 6 them -- if we looked at a list of securities on 7 388-B, some of those securities, many of those 8 securities were also in -- also being financed by 9 the Fed. 10 Q. Right. 11 A. So they were what we thought were in 12 the repo facility that we were going to assume 13 when we reviewed that list of securities on the 14 Wednesday, Thursday. Not all of them, though. 15 Some of them were just not there. And some of 16 them would have therefore been excluded assets and 17 some of them would have been included assets. 18 I seem to -- I remember that there was 19 not many of the excluded assets -- no, actually I 20 can't remember exactly how many of the included 21 or -- since the included and excluded list 22 pertained to the Lehman balance sheet, not to the 23 repo facility, there were both included and 24 excluded assets in the Thursday repo facility. 25 Q. So in the Thursday -- September 18	Page 177 1 KING - HIGHLY-CONFIDENTIAL 2 Thursday repo facility -- 3 A. Before it was the Barclays -- the Fed 4 one. 5 Q. No. I want to know -- I want to keep 6 the story going. The September 18 repo facility, 7 some of those assets eventually make their way to 8 Barclays, and within that pool of assets, there 9 are a certain number of mortgage-related 10 securities; is that right? 11 A. Yes. There was some -- some of the 12 mortgage-related securities were in the Fed 13 facility. Some other securities as well. 14 Q. Do you know how many of the securities 15 within -- that came to Barclays constituted 16 mortgage-related securities? 17 A. There is a difference. Again on the 18 Thursday when we were looking at what we thought 19 we were going to receive from the Fed, there was a 20 certain amount of the securities that were on that 21 list. 22 On the Friday, by the Friday when 23 we -- after the Fed facility has been refinanced 24 by the Barclays repo facility, then there were -- 25 out of the 30 or so billion dollars of the

<p style="text-align: center;">Page 178</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 securities that were both in the Fed facility that 3 ended up in the Barclays facility, there were some 4 of the mortgage assets, but in addition there were 5 other assets, other mortgage assets, some other of 6 the mortgage assets which we hadn't looked at on 7 Thursday, but we had looked at on Tuesday, that 8 turned up in the extra 10 billion.</p> <p>9 Q. So as you talked about earlier, on 10 Friday you realize there is two different types -- 11 you assumed two different types of securities, 12 about 32 billion worth of securities that you 13 already knew about using the JPM marks?</p> <p>14 A. Correct.</p> <p>15 Q. And 10 billion using the BoNY marks of 16 securities that you didn't expect to receive?</p> <p>17 A. Correct.</p> <p>18 Q. There were mortgage securities in both 19 of those groups; is that right?</p> <p>20 A. That's correct. Yes.</p> <p>21 Q. Do you know about how much?</p> <p>22 A. I remember it being about 3, 3 billion I think. It was about 3 billion, and we thought they were worth about 1 and a half.</p> <p>23 Q. And those are the types of -- when you</p>	<p style="text-align: center;">Page 179</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 say 3 billion, that's within both of those two 3 groups? 4 A. Yeah. That's what I remember. 5 Q. And those are the types of securities 6 that you have been focusing on because they get 7 put into your group eventually? 8 A. That's correct, yeah. 9 MR. STERN: Is there a question? 10 MR. HINE: No. He answered it. 11 MR. STERN: Just wait for a question. 12 BY MR. HINE: 13 Q. Did you want to elaborate on 14 something? 15 A. No. I was just thinking about that. 16 That's fine. 17 Q. Mr. King, I am going to hand you 18 another document, that has been previously marked 19 as 144-A, and my question is whether you have ever 20 seen that before. 21 A. Yes. 22 Q. What is this document? 23 A. I've seen it before, but I don't 24 really know. 25 Q. Did you receive a copy of this from</p>
<p style="text-align: center;">Page 180</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Mr. Malloy around -- on Friday, the 19th? 3 A. I'm on the e-mail, so yes. 4 Q. Do you have any understanding of why 5 Mr. Malloy prepared this analysis? 6 A. Marty was just involved in the 7 settlement of the repo, so he -- I don't know why 8 he produced this in particular. It is a pretty -- 9 the original e-mail is a pretty vanilla e-mail 10 just saying -- I don't know who Jackie Stanley 11 Jones is, but it is just a description of Fed wire 12 securities, but I don't know what it is other than 13 that. 14 Q. You don't know why he prepared it? 15 A. Marty and others, Gerard and others needed to know what was being received by 17 Barclays, so there would have been a lot of e-mails on Friday morning saying -- starting to try to get a handle on what had been received. 19 This looks like one of many of those. 20 Q. Did you ever hear any discussions on 21 Thursday or Friday of that week about the amount 22 of excess collateral that had been posted towards 23 the repo? 24 A. I've never heard -- I don't think I</p>	<p style="text-align: center;">Page 181</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 have heard the term "excess collateral" per se, 3 but there was -- we were obviously extremely 4 worried on the Friday. We were very worried on 5 Wednesday and Thursday. We had a population of 6 securities and we were very worried that those 7 really might not be worth 45 billion dollars. 8 We were even more worried -- that was 9 with at least a list that was purportedly going to 10 be delivered to us. 11 We were even more worried over 12 Thursday night and into Friday that now we just 13 had a list of stuff that we had no idea whether it 14 was worth what we just lent against it. So there 15 was lots of discussion of whether there was 16 adequate collateral or how -- actually, no one 17 really talked about whether there was adequate 18 collateral. It was just how much was the 19 collateral worth. 20 So there was that discussion, but not 21 excess collateral per se. 22 (Exhibit 391-B, document Bates stamped 23 BCI-EX-S 136198 marked for identification, as of this date.) 24 Q. Mr. King, I am handing you a document</p>

<p style="text-align: right;">Page 182</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 marked as Exhibit 391-B, which has Bates stamp 3 BCI-EX-S 000136198. If you wouldn't mind taking a 4 moment to look at it. 5 A. OK. 6 Q. Have you ever seen this e-mail before? 7 A. No. Other than I am copied on it. It 8 is to me, so once upon a time presumably, but I 9 don't remember it. 10 Q. No recollection of this e-mail? 11 A. I remember the discussions we were 12 having about the time, but I don't remember the 13 e-mail. 14 Q. Could you describe for me the 15 discussions you were having about the topics in 16 this e-mail? 17 A. Yeah. I alluded to them earlier 18 actually. You can actually see in this e-mail the 19 evolving plan of how to deal with the assets that 20 were coming on board. And in fact, you could see 21 a number of things here. 22 Eric obviously -- you know, Keegan 23 going back to John, both John and I work for Eric. 24 Q. John? 25 A. Mahon. So the e-mail from Mike Keegan</p>	<p style="text-align: right;">Page 183</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 is to John Mahon, and both John and I work for 3 Eric, so he's -- Mike is correctly pointing out 4 that if we need additional resources, we really 5 need to ask Eric for additional resources. 6 You can see some of the evolving 7 discussions about what we do with the assets, are 8 we passing assets over to the trading books. You 9 see still here on the Friday, you can see the 10 allusion to the idea of the trading books on 11 Monday, as if the flow trading desks will receive 12 the assets on Monday in a normal way, and another 13 group which will liquidate them. 14 So you start to see the evolving plan 15 of how do we manage the assets on an ongoing 16 basis. Do we push them back to the business or do 17 we liquidate them. 18 You can also see Nick Leyhane, who 19 assisted me on the equities, it highlights just 20 how much -- he is saying half a billion dollars of 21 S&P -- I think this is out of -- September, 8 22 a.m. -- is that London time or New York time? 23 Q. I don't know. 24 A. The equities, equities amount is 25 before we realized we actually had 8 billion</p>
<p style="text-align: right;">Page 184</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 dollars worth of equities, not 500 million 3 dollars. So in that delivery there was 4 considerable more equities than we originally 5 thought, and that kind of highlights that we had a 6 very different problem on our hands on Friday than 7 we thought we were going to have on Thursday. 8 Q. I want to focus on the first two 9 paragraphs, where it looks like if the court says 10 no and if the court says yes. Do you see those? 11 A. Right. 12 Q. Do you recall discussions about those 13 two options or possibilities? 14 A. No. 15 Q. The second paragraph, where it says, 16 "If the court says yes," it says, "we will split 17 the book into two bits. One group of assets are 18 those that are part of the deal which needs to be 19 passed over to the trading books on Monday, and 20 another group which will liquidate them." 21 Do you recall any discussions about 22 splitting the books in bits, or does that ring a 23 bell with you at all? 24 A. No. Yeah, I mean we discussed -- as I 25 said earlier, we discussed the idea that some of</p>	<p style="text-align: right;">Page 185</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 the assets would be managed by the desks, and some 3 of them would be managed by my desk. Even though 4 it was not within our historic mandate, we would 5 staff up the desk to be able to do it. 6 I can't -- I don't really 7 understand -- I don't have any recollection of the 8 court stuff or why that would be of any relevance. 9 Q. Are we OK? Do we need a break at all? 10 A. No. 11 Q. While we are looking for a document, 12 Mr. King, do you recall any discussions during the 13 week of the 15th or I guess toward the end of the 14 week of the 15th about whether Barclays was going 15 to take on Lehman's short positions as opposed to 16 its long positions? 17 A. At the end of which week? 18 Q. At the end of the week of the 15th. 19 Not in the early part of the week but towards the 20 end. 21 A. No. 22 Q. Did Barclays end up taking on Lehman's 23 short positions or did they not? 24 A. No. 25 Q. That's what I thought. But do you</p>

<p style="text-align: right;">Page 186</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 remember any discussions about that possibility or 3 taking on selective short positions? 4 A. No. I mean early on in the week, 5 early on in the week there was the balance sheet 6 which has longs and shorts on it, but I don't 7 remember that at the end of the week. 8 Q. Right. OK. 9 And by the end of the week, Barclays 10 was not taking on the short positions; is that right? 12 MR. STERN: Objection, objection to the form. 14 A. I just don't remember any discussion of the shorts, and I don't -- I didn't end up managing any short positions, so. 17 Q. OK. Let me hand you a document that has previously been marked as Exhibit 8. Again it is a thick document. I am not going to ask you about most of it, but primarily relating to the second page. 22 You take as much time as you want to review the document. 24 A. OK. 25 Q. My question is, if you could turn to,</p>	<p style="text-align: right;">Page 187</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 I think the second page, it has LBI net long 3 inventory, some kind of spreadsheet. Do you see 4 that? 5 A. Um-hm. 6 Q. First of all, let me start with have 7 you ever seen this document before? 8 A. No. 9 Q. Have you ever seen this spreadsheet 10 before? 11 A. I don't think so, no. 12 Q. Do you have any understanding of what 13 its purpose is? 14 A. No. 15 Q. Is that a no? 16 A. Yeah, no. 17 Q. Can you tell by looking at it who 18 might have prepared it? 19 A. It could be anybody. Anybody at Lehman who had access to the inventory. 21 Q. So you think this is a Lehman spreadsheet? 23 A. LBI -- LBI on the 17th. They would see this money market. It says LBI on the 17th. 25 Q. So this is --</p>
<p style="text-align: right;">Page 188</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. It would have to be produced by LBI 3 or -- I mean it had to be produced by a Lehman 4 person. 5 Q. Do you know why Mr. Gerard was 6 forwarding this to you on Friday? 7 A. He didn't forward it to me. Where is me? 9 Q. In the middle of the page 1, it says -- 11 A. Oh. 12 Q. -- Jerry Reilly forwarding it to you. 13 You are a recipient on the e-mail. 14 A. Me and Jonathan. 15 I am sorry, I don't know what it is. 16 MR. HINE: Can we take a five-minute break, so I can see if I can finish up here. 18 MR. STERN: Yes, yes. 19 (Recess) 20 BY MR. HINE: 21 Q. Mr. King, just a few questions and then my portion of this day will be done. 23 If you could turn to Exhibit 390-B, 24 which I asked you about previously, in particular 25 the last page of 390-B. This is the acquisition</p>	<p style="text-align: right;">Page 189</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 balance sheet that we talked about earlier. 3 I just had some -- I need some 4 clarification of you on two items. First of all, 5 do you recall talking about the 2.83 number, the 6 valuation adjustment? 7 A. Correct. 8 Q. And I thought you had said, and I'm not trying to -- I just want to bring you back to 10 your old testimony. I thought you said that that 11 was the result of a difference between the 45.18 12 number and a number based on the marks that 13 Barclays had put on the securities they had 14 received from Lehman. Is that right? 15 A. Based on the -- 16 Q. As of that date. 17 A. -- PMTG, my group's best estimate as 18 of that date from whatever source, we had managed 19 to put forth an orderly liquidation value. 20 Q. And I guess my question is, where did 21 you get those marks that you put on those -- where 22 did PMTG get those marks? 23 A. I got them from a combination of 24 the -- remember I said I -- we had chopped up the file and -- file of securities and passed it out</p>

<p style="text-align: right;">Page 190</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 to relevant Barclays desks or we had marked them 3 ourselves, or if we didn't know what it is, we had 4 estimated it in some variety of ways. 5 Q. Were some of the marks, marks that you 6 had put on these assets earlier in the week, say 7 back in Monday or Tuesday? 8 A. Yeah. Unfortunately, the process 9 lagged, you know, because it was always -- it was 10 almost impossible to keep marks -- so for this 11 balance sheet for example, for example, this would 12 have had to have been produced based on data that 13 we had provided to Gary over the weekend that 14 would have been based on marks that we had put on 15 the portfolio or -- marks that we had put into our 16 spreadsheet on the 19th, some of which would have 17 been based on marks that we had come up with at 18 the beginning of the week. 19 Q. So it is the accumulated marking by 20 Barclays starting in the 15th all the way through 21 that week? 22 A. Yeah. 23 Q. Is the set of marks you used? 24 A. I think it is also -- rather than 25 using Barclays, it is PMTG at that point. I'm not</p>	<p style="text-align: right;">Page 191</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 sure the firm had espoused our position, so that 3 was -- it was PMTG's latest estimate line by line, 4 and then that was refined over a period of time. 5 Q. And then so PMTG -- I didn't mean to 6 ascribe a difference between PMTG and Barclays, 7 but PMTG has been trying to put marks on these 8 various securities dating back to the prior 9 Monday, all the way to the 15th? 10 A. Correct. 11 Q. This 2.83 is the product of a series 12 of marks created by that process that -- as of the 13 22nd? 14 MR. STERN: Objection to the form. 15 Q. Let me rephrase that. Let me rephrase 16 it. 17 The marks that you used to come up 18 with the 2.83 number were PMTG marks, as of the 19 22nd -- 20 A. No, I don't know whether these are -- 21 no. 22 Q. OK. 23 A. This e-mail is as of the 22nd. 24 Q. OK, I understand. 25 A. I notice it is at the end of the</p>
<p style="text-align: right;">Page 192</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 London day, but it is still as of the 22nd. 3 I don't remember -- we were very, very 4 heavily embroiled in the risk management of the 5 assets that we had acquired by this Monday. 6 Q. OK. 7 A. So I don't remember whether this 8 was -- some of the marks that PMTG was using may 9 well have been updated on this Monday. Some of 10 them may have been latest guess over the weekend. 11 I think probably over the weekend, and 12 then, in other words, they may have come -- some 13 of them would have come from various stages during 14 the course of the previous week. 15 Q. I guess that was my question. I 16 didn't mean to -- I am sorry. 17 A. The 2.83 is -- what we would have done 18 was put the value that we thought was on the 19 portfolio of the 42.55, let's say, and then there 20 was the sum of the BoNY marks, which was the 21 45.18, and the 2.83 just drops out as the 22 difference between the two. 23 Q. While we are looking at that, what 24 does the "Friday P&L approx." entry mean? 25 A. There is always carry and yield on a</p>	<p style="text-align: right;">Page 193</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 portfolio. That would have been that. But I'm 3 not sure -- that would have been what that is. 4 Q. So other than that -- I think you have 5 explained to me where you get the 2.83, but the 6 marks that you used for PMTG were accumulated by 7 PMTG from the period of the 15th through that 8 weekend, the following weekend; is that right? 9 MR. STERN: Objection to the form. 10 You can answer. 11 A. The -- there was a production line, if 12 you like, of Barclays' desks, my people, me, Gary, 13 that would have resulted in a steady evaluation of 14 the best estimate at the mark, of what we thought 15 would be an orderly liquidation mark or whatever 16 mark we were being asked for at a particular time, 17 to go into -- to go up to product control so that 18 they could produce this. 19 Q. And that process is what took place 20 for the week of September 15? 21 A. No. 22 MR. STERN: Object to the form. 23 A. No, that -- no. All that happened 24 during the week of the 15th was that -- we 25 didn't -- I don't remember seeing any acquisition</p>

<p style="text-align: right;">Page 194</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 balance sheets during the course of the week. All 3 our desk did was try to ascertain the risk and the 4 best guess of both a liquidation valuation and an 5 orderly liquidation valuation during the course of 6 that week.</p> <p>7 Once the transaction had closed on the 8 Monday, then there was a -- there was both the 9 risk management process, which was my problem, and 10 also a control process, which was product 11 control's, and obviously we had to have an input 12 to product control, which is where the 42.55 would 13 have been the latest -- Gary is using our latest 14 estimate of value -- you can see it hadn't been 15 updated because it still had the cash on it, for 16 example, of the 7 that wasn't received and so on.</p> <p>17 Q. I didn't mean to suggest you were 18 doing the acquisition balance sheet during the 19 week. I just wanted to see when the -- the marks 20 that you used were developed during that week; is 21 that right?</p> <p>22 MR. STERN: Objection to the form. 23 Objection to the form. I don't know what 24 the question is. 25 Q. You can answer.</p>	<p style="text-align: right;">Page 195</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 MR. STERN: The question is, is that 3 right? What's the question? 4 Q. You can answer. 5 MR. STERN: Well, the question is, "I 6 wanted to see when the marks that you used 7 were developed during that week." 8 MR. HINE: Jack, if you have an 9 objection to the form, just state it. Don't 10 coach him. 11 MR. STERN: I am asking you what your 12 question is. 13 Q. When the marks that you used -- let me 14 restate it. 15 I didn't mean to suggest that you were 16 working on the acquisition balance sheet, as I 17 thought I might have confused you with my last 18 question, during that week, the prior week, the 19 15th. 20 A. Right. 21 Q. But in developing this 2.83, the marks 22 that PMTG used were the product of its 23 accumulating knowledge about the marks from the 24 15th through the following weekend; is that right? 25 A. We would have -- depending on the</p>
<p style="text-align: right;">Page 196</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 product type -- some -- the 8 -- for example, of 3 that 42.55, approximately 8 billion dollars was 4 cash equities. That's incredibly easy to mark 5 from an accounting point of view. There is an 6 exchange, you type in the ticker for the equity 7 and you get a price. Therefore, that process took 8 one of my analysts approximately -- I think he had 9 Nick Leyhane in London do it for him -- 20 minutes 10 to mark 8 billion dollars in assets.</p> <p>11 As a trading matter, it's useless 12 because the -- but it is necessarily where a firm 13 has to mark cash equities. Because there is an 14 exchange. It says the price is 22 dollars for -- 15 you know, Barclays stock is at 3.98. Therefore, 16 you better mark all the Barclays stock at 3.98.</p> <p>17 If you happen to be long a billion 18 dollars of Barclays stock and you go out and sell 19 it, you are never going to get 3.98, but the 20 process is pretty easy from the point of view of 21 providing an accounting number.</p> <p>22 What we had to do over and above 23 that -- so that could have been updated and may 24 well have been updated on Saturday or Sunday. We 25 would have actually had the Bloomberg ticker in a</p>	<p style="text-align: right;">Page 197</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 spreadsheet, so it would have kept updating it. 3 Other things are less easy. Other 4 things are, you have to run a model. You have to 5 take cash in and do all sorts of things to be able 6 to determine what the price is. So there is a 7 full range. 8 8 billion dollars worth of equities 9 doesn't trade at where those marks are. A good 10 example would be, we had cash equities where the 11 amount of the cash equity that we owned 12 represented 400 days of the historical trading 13 volume. That means if we would have traded as 14 much of that stock as trades every day for the 15 last 400 days, we still couldn't get out of our 16 position. 17 But still, the last mark, last penny 18 of stock that traded was where we had to mark that 19 position. It took us a year at that point to get 20 out of those positions, and many of them therefore 21 by construction every time we sold them took a 22 loss every time. 300 million dollars of loss or 23 whatever it was in the end, but every time we sold 24 we were selling at a discount to the published 25 mark. Easy to provide, put the published mark</p>

1 KING - HIGHLY-CONFIDENTIAL 2 into that spreadsheet. 3 The desk estimates were an attempt to 4 then say, we have taken that, you know, where the 5 exchange, such and such, and we assume it is going 6 to cost us an additional 300 million dollars to 7 bid side for us to be able to sell them. So we 8 would have deducted that from that price, and that 9 would have gone into the 42.55. 10 Now, many times we were just wrong, 11 because the market was also deteriorating as we 12 went along. So it was going to end up costing us 13 an awful lot more to actually sell the stuff. 14 Not only did we have that problem, 15 over the subsequent days we realized the 7 billion 16 dollars wasn't going to turn up 7 billion dollars. 17 We were going to get another slew of securities as 18 well, many of which were securities that were on 19 the excluded asset list that we didn't think were 20 worth anything. 21 So the problem was just getting -- but 22 that's the reason why -- some aspects of providing 23 that 42.55 could have been done on an ongoing 24 basis and others -- but would still have been 25 subject to a -- you know, an observable exchange	1 KING - HIGHLY-CONFIDENTIAL 2 traded mark minus an estimate, and then others 3 would have been things that would have really 4 taken models or input from other desks to come up 5 with. 6 Q. OK. If you see further down on the 7 spreadsheet, it says, "Previously excluded 50 8 percent MBS." Do you see that? 9 A. Yeah. 10 Q. That's mortgage-backed securities? 11 A. Is that a zero? 12 MR. STERN: The question is what MBS 13 means. 14 A. Is that what -- 15 Q. Yes. 16 A. MBS means mortgage-backed securities. 17 Q. If you look at footnote 3 on that 18 line, it says, "September 20 clarification letter 19 indicates we no longer receive these assets." Do 20 you see that? 21 A. Yes. 22 Q. Do you have any understanding of what 23 the September 20 clarification letter does? 24 MR. STERN: Objection to form. 25 Q. With respect to mortgage-backed
1 KING - HIGHLY-CONFIDENTIAL 2 securities? 3 A. No. 4 Q. OK. Did, in fact -- I know we have 5 talked about earlier some of the mortgage-backed 6 securities made their way into the 32 point -- 32 7 billion dollar pool we talked about earlier and 10 8 billion dollar pool from the repo. Do you recall 9 that testimony? 10 A. Can you say that again. 11 Q. I'm just trying to get you back to the 12 testimony, but we had previously talked about some 13 of the mortgage-backed securities ended up in the 14 pool of assets that Barclays received as a result 15 of the repo, correct? 16 A. Yes. 17 Q. And we compared that to the original 18 number of 6.6 billion in mortgage-related 19 securities. Do you recall that? 20 A. Yes. 21 Q. How many mortgage -- did Barclays 22 ultimately get the entirety of the 6.6 23 mortgage-backed securities? And I'm not talking 24 about -- I'm not trying to confuse you with the 25 valuation, but I'm just talking about the pool we	1 KING - HIGHLY-CONFIDENTIAL 2 originally were talking about -- 3 A. I understand. No. 4 Q. Did Barclays get all that? 5 A. No. 6 Q. Do you know how much Barclays did get? 7 A. Eventually -- like by the end of the 8 year? Or by -- 9 Q. Yeah. 10 A. Because we got -- we got some -- we 11 didn't get all of it. We weren't even supposed to 12 get all of it for this thing. We got some of it 13 in the Fed facility that we -- the 30-odd billion 14 dollars of Fed facility assets that we thought we 15 were going to get. 16 Q. Right. 17 A. We got some of it in the 10 billion 18 dollars that we didn't think we were going to get, 19 and got some of it as part of the JP settlement in 20 lieu of the 7 billion dollars, and then some of it 21 we never got. 22 Q. Have you liquidated those securities 23 yet? 24 A. Some of them. 25 Q. Most of them or a small portion of

Page 202	Page 203
1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 them?	2 Q. OK.
3 A. Of what we are calling the	3 A. So they are worth a tremendous amount
4 mortgage-backed securities?	4 less.
5 Q. Yes, the entire pool of	5 If you mean of those securities, that
6 mortgage-backed securities that Barclays received,	6 value, I think it was about -- we thought it was
7 no matter how you got it, from Lehman.	7 worth about 2 billion dollars or so. What we
8 MR. STERN: Objection to --	8 eventually ended up with, 2.2 I think, and we must
9 Q. Can you give me an estimate of the	9 have sold about -- the last time I was involved
10 percentage of it that you have liquidated by now?	10 with it, it would have been about 60 percent, I
11 MR. STERN: Objection to the form.	11 think, or so.
12 A. We had about 4 point -- we only -- we	12 Q. Do you know if Barclays made money on
13 estimated that the 6.5 billion was only worth at	13 those securities, the mortgage-backed securities?
14 most about 3 point something billion, so -- and in	14 A. We lost money.
15 the Lehman -- in the repo that we thought we were	15 Q. Do you know how much or --
16 going to get, I think we thought that was about	16 A. I don't remember.
17 1.5, even though JP had it at about 3.3.	17 Q. Do you know if there has been any kind
18 And some of those are very obvious	18 of assessment of how much money Barclays made or
19 mistakes as well. Because JP doesn't know any	19 lost with respect to the mortgage-backed
20 more than we do what some of the securities are.	20 securities that it received from Lehman?
21 Sometimes it says, if I don't know what it is,	21 A. No, never tried.
22 mark it at par, but it may actually be worth zero,	22 Q. For the same reasons we talked about
23 and that's the reason why that number comes out so	23 before, it would be difficult to do?
24 wrong, because these are so complicated	24 A. No. It would actually be easy to do,
25 securities.	25 just not useful. We had our own portfolio of
Page 204	Page 205
1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 mortgage-backed securities that were also losing	2 Q. I just want to make sure I understand
3 money, so we just put them in with those, and	3 your testimony. So leaving aside for the moment
4 therefore, I didn't track -- even though I could,	4 the question of value, are you able to estimate
5 I didn't track what was a Lehman security versus	5 what percentage of that 6.5 billion of
6 what was a Barclays security. We just organized	6 mortgage-backed securities that we have been
7 them for appropriate liquidation or retention.	7 discussing that is represented on Exhibit 388-B,
8 MR. HINE: OK, Mr. King, that is all	8 are you able to estimate what percentage of those
9 the questions I have. I think one of my	9 mortgage-backed securities ended up in the hands
10 colleagues has some questions to ask you as	10 of Barclays?
11 well.	11 MR. STERN: Objection to the form.
12 (Recess)	12 Get out 388-B. And let's hear the question
13 EXAMINATION BY	13 again.
14 MR. OXFORD:	14 MR. OXFORD: Can you read it back.
15 Q. Good afternoon, Mr. King. I	15 (Record read)
16 introduced myself earlier on. My name is Neil	16 A. Not accurately, and the reason for
17 Oxford. I represent the SIPA trustee for LBI.	17 that is that we got the ultimate delivery of
18 Following up on the examination by	18 securities that Barclays received, first the
19 Mr. Hine, initially you testified about the	19 subset of the ones that it expected to receive in
20 portion of the 6.5 billion of mortgage-backed	20 the original repo, the ones that it got in the 10
21 securities that Barclays ended up purchasing.	21 billion dollars of repo that it didn't expect to
22 Do you recall that?	22 receive and the ones that it got as part of the
23 A. Yeah, yeah.	23 settlement against the 7 billion dollars of cash.
24 MR. STERN: Wait a second.	24 We actually received a lot of securities that we
25 OK, OK.	25 had -- that would have fallen into that category

<p style="text-align: right;">Page 206</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 that we had never seen before on -- ever. 3 Q. And just so we have a clear record, by 4 that category, you are pointing to -- 5 A. To the 6.56. 6 Q. And by that category, you are also, I 7 take it, referring to the total mortgage and 8 mortgage-backed security reference in 388-B? 9 A. Yes, yes. So -- and unfortunately, I 10 can't -- I can't remember how many of the 11 securities that we did receive were also part of 12 this original list because there were ones that 13 were in the repo facility that weren't also on the 14 Lehman balance sheet or that were delivered by JP 15 ultimately in lieu of the 7 billion dollars that 16 weren't on this balance sheet and so I can't quite 17 get back to a subset in my head of this, I'm 18 afraid. 19 Q. Let's try it this way, Mr. King, you 20 said that under the repo, you received what you 21 considered to be a value of approximately 1.5 22 billion dollars worth of mortgage-backed 23 securities, is that an accurate statement? 24 MR. STERN: Objection to the form. 25 A. I think that was in the original -- I</p>	<p style="text-align: right;">Page 207</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 think that was of the original, of the original -- 3 the numbers that I can remember are, I always 4 remember that 6.5. I remember thinking that that 5 6.5 wasn't worth more than about 3.2 and that was 6 both through crude estimate and steadily refined 7 estimates. I think we ultimately concluded it was 8 worth less. 9 I remember that we, in the repo 10 facility, I think there was 3 billion dollars or 11 thereabouts which was roughly half of this that 12 was in the expected repo -- in the Fed, supposedly 13 in the Fed facility that we are about to receive 14 and I remember thinking that was worth about 1.5 15 billion. 16 Q. That, just so I am clear, is in the 17 pool of 32 billion? 18 A. No, that was in what we thought was 19 the pool of 50 that we were going to receive. I 20 think that's right. And then what we ended up 21 receiving was some of that and then some of this 22 that we weren't expecting to receive and I seem to 23 remember that being about 4.5 billion, using the 24 same marks that were in here that we thought was 25 worth about 2.2 billion.</p>
<p style="text-align: right;">Page 208</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. So the 4.5 billion, using the marks 3 reflected in Exhibit 388-B that you believe is 4 worth approximately 2.2 billion, was received 5 under -- as part of both the 32 billion pool that 6 you told Mr. Hine about? 7 A. Yes. 8 Q. Part of also the 10 billion pool? 9 A. I think that's also right. 10 Q. Was that also part of the JP Morgan 11 settlement referred to as 7 billion cash? 12 A. No, the JP settlement was more, we got 13 1.25 -- all we got for that was 1.25 cash and then 14 we got securities, I think we got about 2 billion 15 dollars worth of securities that we had seen 16 before and 2 billion dollars that we had -- that 17 one I have forgotten, actually. 18 Q. Just so we have a clear record, it is 19 your understanding that Barclays, under the repo 20 transaction that is constituted by the pool of 32 21 billion of assets and the pool of 10 billion of 22 assets, Barclays received -- using the marks in 23 Exhibit 388-B -- approximately 4.5 billion of 24 mortgage-backed securities which you believe is 25 worth approximately half of that, is that</p>	<p style="text-align: right;">Page 209</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 accurate? 3 MR. STERN: Objection to the form of 4 the question. 5 Can you repeat it please. I don't 6 know how that creates a clear record. 7 MR. OXFORD: Please read it. 8 (Record read) 9 MR. STERN: Objection to the form. 10 A. What I believe they are worth -- for 11 one thing, what I believe they are worth now 12 versus what I believed they were worth shortly 13 thereafter may be a different thing and certainly 14 market conditions were deteriorating, not 15 improving. Most of those markets lost even more 16 value going into the fourth quarter and of course 17 there was no way for us to liquidate positions in 18 advance of that. 19 The 4.5, I just -- I cannot remember, 20 I'm afraid, whether the 4.5 represented what we 21 got in -- it certainly was at least the -- what 22 you're calling, using the same -- we are using the 23 same types of marks, the 4.5 was included in the 24 32 and in the 10, but I can't remember whether it 25 also included what was in the JP settlement. 1</p>

<p style="text-align: right;">Page 210</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 just can't remember. 3 Q. Separate and apart from any securities 4 that Barclays received under the JP Morgan 5 settlement or either side of the repo, the 32 6 billion or 10 billion, to your knowledge, 7 Mr. King, did Barclays receive any mortgage-backed 8 securities from Lehman as part of the transaction 9 consummated in September of 2008? 10 MR. STERN: Objection to the form. 11 You can answer. 12 A. Could you repeat that, read that back 13 to me. 14 (Record read) 15 MR. STERN: Again, objection to the 16 form. Either side of the repo. 17 A. Yeah, what do you mean by either side 18 of the repo. 19 MR. STERN: Why don't you just ask the 20 repo. Aside from what you got -- 21 Q. Let me ask the question again. Aside 22 from the repo transaction and aside from the 23 settlement with JP Morgan, to your knowledge, 24 Mr. King, did Barclays receive any mortgage-backed 25 securities from Lehman?</p>	<p style="text-align: right;">Page 211</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. There was some mortgage-backed 3 securities. Can I clarify, repeat something that 4 I said earlier, of course. 5 Q. Yeah, sure. 6 A. Which is, unfortunately, people use 7 mortgage-backed securities to mean more than just 8 mortgage-backed securities. So if I answer that 9 narrowly, I think the answer is approximately no. 10 Using mortgage-backed securities to 11 mean franchise -- franchise loans, manufactured 12 housing, distressed credit cards, small 13 business loans, whole business securitizations, 14 the myriad of other distressed credit -- auto 15 loans, auto receivables, all of that stuff, 16 that's what people use that -- CDOs, CLOs, 17 CSOs, that, unfortunately, that's what people, 18 that line item on B, whichever it was, 388-B, 19 the line item on 388-B and even our own 20 category, broad category of what the principal 21 mortgage trading group trades is all of that. 22 There were securities of that nature 23 that were in the list of unencumbered securities 24 that we were expecting to receive. And some of 25 them we did receive and some of them we haven't</p>
<p style="text-align: right;">Page 212</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 received. 3 Q. OK, new topic, Mr. King. 4 In your role with Barclays, in 5 September of 2008, did you have responsibility 6 for exchange-traded derivatives? 7 MR. STERN: Objection to the form. 8 You can answer, you can answer if you 9 understand the question. 10 Q. Let's try it this way, do you have an 11 understanding of what the term "exchange-traded 12 derivatives" is? 13 A. Yes. 14 Q. Can you give me that understanding? 15 A. Exchange-traded derivatives are 16 derivative contracts that are cleared through a 17 clearing house and have a published closing price 18 listed on an exchange and are traded through the 19 exchange. So it is often easier to define them as 20 they are not OTC derivatives. In other words, 21 they are not over-the-counter derivatives. 22 Q. Using your definition of 23 exchange-traded derivatives, Mr. King, did you 24 have responsibility for exchange-traded 25 derivatives in your day-to-day role in Barclays in</p>	<p style="text-align: right;">Page 213</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 September of 2008? 3 MR. STERN: I am going to object to 4 the form. Neil, I think you might find it 5 more productive to ask him what role, if 6 any, he had in connection with 7 exchange-traded derivatives. I think the 8 way you formed the question makes it harder 9 for him to answer. 10 Q. Let's try the question that I asked. 11 A. I don't have day-to-day responsibility 12 for exchange-traded derivatives. 13 Q. Did you have any responsibility for 14 exchange-traded derivatives? 15 MR. STERN: Objection to the form. 16 A. As a result -- through the 17 transaction, for the period of the acquisition 18 period, I facilitated in assessing and risk 19 managing the exposure to the exchange-traded 20 derivatives that we had acquired through the 21 purchase agreement. But that was definitely one 22 that as soon as we were capable of pushing that 23 back into the normal equities trading businesses, 24 we did. We were mostly interested in closing out 25 the positions as quickly as possible and actually,</p>

<p style="text-align: right;">Page 214</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 the only piece that I had any involvement in were 3 the noncustomer exchange-traded derivatives 4 positions.</p> <p>5 Q. What exchange-traded derivatives do 6 you understand were purchased by Barclays?</p> <p>7 MR. STERN: Objection to the form.</p> <p>8 A. The line item in the purchase 9 agreement said the exchange-traded derivatives 10 businesses and -- if I remember correctly, and it 11 therefore, we took on responsibility for 12 everything -- the risk management after the 22nd, 13 the risk management of all of the open positions 14 that were then outstanding on any of the 15 exchanges, any of the exchanges.</p> <p>16 Q. Are you able to give me a list of the 17 exchanges you mean to reference when you say any 18 of the exchanges?</p> <p>19 A. I couldn't give a full list to be 20 honest with you. There was a dizzying array of 21 them. I don't remember all of the positions that 22 we -- all of the positions that I remember that we 23 were managing were really equity derivative and 24 equity -- equity vol. and equity cash derivative 25 positions.</p>	<p style="text-align: right;">Page 215</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 I think the exchange prior to the 3 22nd, the commodities exchange had already 4 closed out the -- the commodities exchange had 5 already closed out the commodities position and 6 including the TBAs that were managed by Tom 7 Hamilton. It was really most of that was on -- 8 a lot of that was on the clearing house for 9 what was OCC which was the clearing house I 10 think for NASDAQ and a variety of the other 11 U.S. exchanges.</p> <p>12 MR. STERN: Equity vol.?</p> <p>13 THE WITNESS: Volatility.</p> <p>14 Q. Aside from the OCC, do you recall any 15 other exchanges that you were given --</p> <p>16 A. The OCC is a clearing house for a 17 number of exchanges, and yes, there were other 18 clearing houses and there were other exchanges but 19 I don't remember all of them. I really don't.</p> <p>20 Q. Do you remember any of them?</p> <p>21 MR. STERN: Objection to the form. He 22 said he doesn't remember.</p> <p>23 A. I remember the New York Stock 24 Exchange, for example, would be one, the London 25 Stock Exchange. They were most of the stock</p>
<p style="text-align: right;">Page 216</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 exchanges.</p> <p>3 Q. Do you remember any other clearing 4 organizations you were dealing with with respect 5 to exchange-traded derivatives?</p> <p>6 A. We weren't really dealing with any of 7 the clearing houses, just to clarify what our role 8 was. In the same way as I described earlier, our 9 job was to value and risk management.</p> <p>10 What I need -- the only exposure to 11 the clearing houses that we had was in an 12 effort to try to ascertain what were the list 13 of open positions that we had acquired and the 14 reason we had to do that was the Lehman, when 15 Lehman had been -- had -- both Lehman Brothers 16 Holdings and LBI and LBIE had become bankrupt. 17 The derivative -- the risk reporting systems 18 showed a combination of their OTC and 19 exchange-traded derivatives and they couldn't 20 isolate just their exchange-traded derivatives 21 positions.</p> <p>22 So to estimate the list, we did have 23 to speak to the exchanges to try and understand 24 what the volatility of the margin that they 25 were calling for was in an effort to estimate</p>	<p style="text-align: right;">Page 217</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 the open risk that they had. Quite literally, 3 we looked that the margin went up when the 4 market went down. We used that to estimate 5 that we must have been long.</p> <p>6 But that was the reason for the dialog 7 with them. There was obviously a separate 8 dialog which was conducted via legal about the 9 moving, the opening of new clearing accounts at 10 the OCC and the others because there was a big 11 discussion for prime brokerage, the client 12 businesses, et cetera. So ours was a very 13 narrow discussion with them as it pertained to 14 identifying risk.</p> <p>15 Q. OK. Do you have an understanding, 16 Mr. King, of the business deal between Barclays 17 and Lehman with respect to exchange-traded 18 derivatives?</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. All I know is that I was asked to 21 manage the -- and by manage, I largely mean close 22 down as much of the outstanding exposure to the 23 exchange-traded derivatives positions that had 24 been -- that were still there and that we had the 25 benefit of all and needed the collateral that had</p>

<p style="text-align: right;">Page 218</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 been posted to the clearing houses to support 3 those open positions. 4 Q. Was it your understanding that 5 Barclays had stepped into the shoes of Lehman at 6 the OCC and other clearing houses? 7 MR. STERN: Objection to the form. 8 A. I don't really -- I don't really know 9 what -- I'm pretty naive in my understanding of 10 the way -- of probably the way the transaction was 11 executed or described. My understanding was that 12 we were purchasing assets. Therefore, I would 13 think of that as there would be specific things we 14 were acquiring as opposed to we were stepping into 15 the shoes of somebody. 16 Q. I understand the distinction. Did you 17 understand that Barclays was acquiring both short 18 and long positions at the OCC and elsewhere? 19 MR. STERN: Objection to the form. 20 A. I couldn't generalize. The OCC 21 positions were -- and short and long is an 22 ambiguous term when we are talking about 23 derivatives because by construction, there are -- 24 derivative is being long a call and short a put, 25 the same thing. Therefore, when we first woke up</p>	<p style="text-align: right;">Page 219</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 and realized we had exposure to the 3 exchange-traded derivatives position, we didn't 4 know whether we were long or short with respect to 5 the U.S. equities market, for example. 6 Did I think that we had the benefit of 7 all of the collateral at the OCC and other 8 exchanges in relation to the proprietary trading 9 books, not the customer books, to support the open 10 exchange-traded derivatives positions and were we 11 risk managing the open exchange-traded 12 derivatives? Yes, that's what I was doing. 13 Q. From whom did you gain the 14 understanding, Mr. King, that you just testified 15 about, specifically that Barclays had the benefit 16 all of the margin or rather to use your words the 17 collateral at the OCC and other exchanges? 18 MR. STERN: At this point, you may be 19 intruding on privileged conversations. So I 20 am going to talk to the witness about this. 21 (Discussion held off the record.) 22 MR. STERN: Going back on the record, 23 I think that this definitely intrudes on 24 privileged conversations and I am going to 25 instruct the witness not to answer.</p>
<p style="text-align: right;">Page 220</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 MR. OXFORD: The witness has already 3 answered -- 4 MR. STERN: I have instructed him not 5 to answer. You can go ahead and ask the 6 next question. 7 MR. OXFORD: I think that is a waiver, 8 but we can take it up at the appropriate 9 time. 10 MR. STERN: I don't think there is any 11 waiver here. You think there is a waiver? 12 MR. OXFORD: I think there might well 13 be. 14 MR. STERN: Where is the waiver? 15 MR. OXFORD: The witness has already 16 testified about his understanding. 17 MR. STERN: By that you infer there 18 has been a waiver of the attorney/client 19 privilege? 20 MR. OXFORD: There may well have been. 21 MR. STERN: That's absolutely wrong. 22 Absolutely wrong. 23 MR. OXFORD: We can have that 24 discussion at the appropriate time? 25 MR. STERN: You never asked him about</p>	<p style="text-align: right;">Page 221</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 conversations with counsel. Now you are 3 trying to ask him about conversations with 4 counsel. 5 MR. OXFORD: No, I am not. 6 MR. STERN: If you are trying in an 7 under-handed way to create a waiver through 8 these questions, then I am going to have to 9 instruct the witness not to answer any more 10 questions along these lines. 11 If that's what you are saying, Neil, 12 you think there has been a waiver of the 13 attorney/client privilege, I am going to 14 instruct him not to answer any more 15 questions on this topic. 16 MR. OXFORD: Jack, I am not trying to 17 do anything under-handed as you well aware. 18 The witness volunteered that he had an 19 understanding that -- please let me -- 20 Jack -- 21 MR. STERN: You asked him what his 22 understanding was. Then you asked him what 23 the source of his understanding was. I then 24 asked him off the record. So there has been 25 no waiver.</p>

<p style="text-align: right;">Page 222</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Why don't you ask your next question, 3 instead of engaging in this nonsense. 4 MR. OXFORD: It was your nonsense that 5 you began, Jack. 6 MR. STERN: Just ask the next 7 question, Neil. 8 Q. OK. Mr. King, do you have any 9 knowledge, other than knowledge gained through 10 conversations with counsel, as to whether Barclays 11 assumed any margin at the OCC or any other 12 exchange? 13 MR. STERN: I am going to instruct you 14 not to answer. 15 MR. OXFORD: What's the basis? 16 MR. STERN: The basis is that you have 17 already said that you think there has been a 18 waiver on this subject. And by answering 19 this question, you are intruding on the 20 sources of his knowledge and I'm not going 21 to allow him to answer when you're claiming 22 that there has been a waiver. 23 MR. OXFORD: I am asking him 24 specifically questions -- 25 MR. STERN: This is a game that you</p>	<p style="text-align: right;">Page 223</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 are playing and I am not going allow it. 3 MR. OXFORD: I am not playing any 4 game, Jack. 5 MR. STERN: Yes, you are. First of 6 all, this is a witness who has told you he 7 didn't negotiate the agreement. He is not a 8 lawyer. He is not here to interpret the 9 agreement which is written in black and 10 white. So this is nonsense. 11 MR. OXFORD: It is not nonsense, I am 12 entitled to -- 13 MR. STERN: It is unproductive for us 14 to engage in this. Please ask a question. 15 MR. OXFORD: If you would let me, 16 Jack, I would do exactly that. 17 MR. STERN: Ask a question. Do you 18 have a question? 19 MR. OXFORD: Yeah, I've got lots and 20 lots of them. 21 MR. STERN: Go ahead. 22 Q. Did you have any understanding, 23 Mr. King, of the value of the margin at the OCC -- 24 let me try that one again. 25 Do you have an understanding of,</p>
<p style="text-align: right;">Page 224</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Mr. King, of the value of LBI's margin at the OCC 3 as of close of business on the 19th of September? 4 MR. STERN: I am going to instruct you 5 not to answer. 6 MR. OXFORD: Off the record. 7 MR. STERN: You have already told -- 8 you have already said by asking a question 9 about his understanding, that gave rise to a 10 waiver. And if that's your position, I am 11 going to instruct him not to answer. 12 MR. OXFORD: Can we go off the record? 13 MR. STERN: I am not going off the 14 record. 15 MR. OXFORD: I would like to go off 16 the record and see if we can -- 17 MR. STERN: No, I want the next 18 question. 19 MR. OXFORD: Let's go off the record. 20 MR. STERN: No, I am not going off the 21 record. 22 MR. OXFORD: I am going off the 23 record. Please come out outside and talk to 24 me. 25 MR. STERN: I am not going to speak to</p>	<p style="text-align: right;">Page 225</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 you off the record. Let's have the next 3 question. Let's complete this deposition. 4 MR. OXFORD: I want to complete the 5 deposition as well, Jack. 6 MR. STERN: Ask the next question. 7 MR. OXFORD: Jack, I will be back in 8 two minutes. If you would like to discuss 9 it off the record, please do so. 10 MR. STERN: I want your next question 11 or we are leaving. If you are terminating 12 the deposition, we are leaving. 13 MR. OXFORD: I am not terminating -- 14 MR. STERN: This is a busy executive. 15 Ask a question. Let's finish the 16 deposition. 17 MR. OXFORD: Let's mark this. 18 (Exhibit 392-B, e-mail dated 19 Wednesday, September 17, 2008 at 19:14:24 20 marked for identification, as of this date.) 21 Q. Mr. King, I have handed you what I 22 have marked as Exhibit 392. Would you take a 23 moment to review that and let me know when you 24 have had a chance to do so. 25 A. OK.</p>

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1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 Q. Do you recall seeing this document	2 A. I don't really -- I don't remember.
3 before, sir?	3 MR. STERN: This document doesn't have
4 A. No. Again, I'm copied on the -- a	4 a Bates stamp on it. Can you explain why
5 party to the e-mail exchange.	5 that is, Neil?
6 Q. Right. In fact, you wrote some of the	6 MR. OXFORD: I think it is how you
7 e-mail exchange.	7 produced it to me, Jack.
8 A. I wrote some of the e-mail exchange,	8 MR. STERN: Without a Bates stamp?
9 so it is wrong of me to say that I don't recognize	9 MR. OXFORD: I believe so. I think we
10 it, but I don't -- I haven't seen this since it	10 have had that problem at a few of our
11 was originally typed.	11 depositions. I'm not quite sure why they
12 Q. You see in the second chain down, you	12 are produced like that, but they are.
13 write to Patrick Clackson and James Walker on 17th	13 Q. Mr. King, Mr. Clackson writes back to
14 of September. Do you see that, at 10 past 8 in	14 you, he says, "The only excluded assets are the
15 the morning?	15 ones you excluded. Nothing else. So no other
16 A. Yes, yes.	16 collateral." Do you see that?
17 Q. "The contracts are exchange-traded so	17 A. Yeah.
18 they would seem to be captured by the definitions	18 Q. Do you have an understanding of what
19 within purchased assets. Think it seems to be	19 Mr. Clackson -- withdrawn.
20 about 3 billion gross." Do you see that?	20 Do you have an understanding of what
21 A. Yeah, yeah.	21 Mr. Clackson meant when he wrote that to you?
22 Q. Can you explain what you meant when	22 A. He -- the only assets that I excluded
23 you wrote that to Mr. Clackson, please.	23 were the ones that we discussed earlier. That's
24 A. 17th was when?	24 the only thing that I could -- so he seems to be
25 Q. 17th was the Wednesday.	25 reiterating -- that's the only thing that I can --
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1 KING - HIGHLY-CONFIDENTIAL	1 KING - HIGHLY-CONFIDENTIAL
2 if I have to interpret what he was saying because	2 there, I am using to assets to mean securities.
3 I don't remember this traffic at all. The only	3 They are on 388-B, there is a line
4 excluded assets as I remember them -- the only	4 item which is called "Total Derivatives and
5 construct of excluded assets that I have got is	5 Other Contracts" on the balance sheet and I
6 the thing that we talked about earlier which was	6 remember -- I can't remember piece by piece,
7 the 3 billion dollars or so of the RMBS assets.	7 but I remember at the time wondering, well,
8 Q. By that you mean the mortgage-backed	8 what are derivatives. And unfortunately, these
9 securities?	9 definitions are -- these descriptions are bad
10 A. Yeah, yeah. That's the only thing I	10 descriptions because they could, you know, they
11 remember on excluded assets.	11 are being used by a business to colloquially
12 Q. Mr. King, is it a fair interpretation	12 describe something there. It says, "Total
13 of your e-mail to Mr. Clackson that you are	13 derivatives and other contracts, 4.838
14 attempting to interpret the asset purchase	14 billion," and I don't remember what I was
15 agreement?	15 concluding, but I am pointing out that we are
16 MR. STERN: Objection to the form.	16 trying to show that we know with the future --
17 A. My original e-mail says -- Patrick's	17 I understand we are purchasing them which
18 finishing sentence seems to dovetail to mine at	18 highlights that I am not -- I don't think I am
19 the bottom which is, I am asking him, can you	19 interpreting. I think I am asking.
20 think of any securities that would be good	20 From what I understand, they are not
21 collateral to the Fed facility other than the	21 in the line item called "derivatives" on the
22 securities that I excluded. And he says to me,	22 balance sheet and that's the one that I am
23 The only excluded assets are the ones that you	23 pointing back to on 390.
24 excluded, and that's referring to assets that	24 So you can see, again, I think most of
25 might have turned up in the repo facility. And by	25 what I am trying to do here is develop a

1 KING - HIGHLY-CONFIDENTIAL 2 population of risk that we need to value and 3 risk manage. But I -- but I am sorry, that one 4 I don't -- that may have been one of many 5 such -- sort of many dialogs that were going on 6 at that time. I don't really remember the 7 details at this point. Also it was on the 8 17th, again, which I think is an early, it is 9 on Wednesday the 17th, rather than Friday or 10 something, so it is -- I just don't remember 11 it. 12 Q. Handing you, Mr. King, what has 13 previously been marked as Exhibit I. I am not 14 going to ask you about the whole of the document, 15 but if you could take a flip through it and let me 16 know whether you have seen this before, please. 17 A. This is an execution copy of the asset 18 purchase agreement, so no, I have not seen this 19 before. I at some point, because you asked me -- 20 earlier I was asked about the one that I provided 21 some comments to the purchase agreement, so I did 22 see a draft of some or all of it -- I don't 23 remember -- I'm not sure I ever saw all of it or 24 at least I never paid attention to all of it. I 25 must have seen a draft, but I have never seen	1 KING - HIGHLY-CONFIDENTIAL 2 execution copies, so I don't think I have them. 3 Q. You see an execution copy on the front 4 to be dated September 16, 2008, correct? 5 A. Yes, yes. 6 Q. If you could have quickly in front of 7 you 302A which is marked by Mr. Hine. 8 A. That's the e-mail I was alluding to. 9 Q. Do you see that you are referring the 10 e-mail that is dated 17th of September, correct, 11 sir? 12 A. Right. 13 Q. You see that is dated one day after 14 the asset purchase agreement appears to be dated? 15 A. That's what I said. I don't really 16 understand -- I don't even know whether that was 17 me -- I have no recollection of the -- I have no 18 recollection of the signing of the agreement on 19 the Tuesday. It wasn't really germane to what we 20 were doing. I am not part of the negotiations. 21 I know there were various 22 modifications and revisions to it over time 23 because I was told about them from time to 24 time. So I don't actually know whether on this 25 302A may well have been -- I can't see how I
1 KING - HIGHLY-CONFIDENTIAL 2 could have gotten hold of an execution copy 3 because it is a signed copy and I may well have 4 happened to have got back on Wednesday the 5 17th, looking at a copy of a draft version of 6 this from prior to here. I just have no 7 recollection -- just the fact that the 8 sequencing is Wednesday the 17th is after the 9 signed copy on the 16th, I don't know that I am 10 copy -- I don't know that I am commenting on 11 this. I might be commenting on a draft from 12 the same day or an earlier day or something. 13 Q. I understand. Can you turn to page 6, 14 please, of what I have marked as Exhibit I. And 15 you see there is a heading about the middle of the 16 page that begins "Purchased Assets." Do you see 17 that? 18 A. Yup. 19 Q. Can you take a moment to read the 20 definition of "Purchased Assets" and I am going to 21 ask you in particular about subsection D. 22 A. Yeah. 23 Q. Let me know when you have done that, 24 please. 25 A. Right.	1 KING - HIGHLY-CONFIDENTIAL 2 Q. Is that -- reading that section, sir, 3 does that refresh your recollection as to what you 4 were reviewing when you wrote to Mr. Clarkson in 5 the exhibit that I have just marked? 6 A. Sorry, on this one. 7 Q. The exhibit I marked is 392-B, sir. 8 A. Yeah, I understand. 9 Not particularly. 10 Q. In reading paragraph D under 11 "Purchased Assets," do you see any reference to -- 12 do you see any reference to that margin at the OCC 13 or other exchanges? 14 MR. STERN: Objection to the form. So 15 it in D -- specifically does it reference 16 margin, is that -- 17 Q. Yes, is there anything in D that 18 references margin or would be interpreted by you 19 to encompass the margin at OCC or elsewhere? 20 MR. STERN: Objection to the form. 21 A. The idea -- an exchange-traded 22 derivative -- an exchange -- if an 23 exchange-traded -- if one is an exchange-traded 24 derivative, it is a peculiar concept in the 25 absence of any construction of collateral against

<p style="text-align: right;">Page 234</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 it, I mean an exchange -- if I acquired an 3 exchange-traded derivative, what have I got? I 4 have just got a contract, but at what? 5 You know, is it -- because it is every 6 day, it is collateralized. So the 7 exchange-traded derivative -- I could easily 8 read exchange-traded derivatives here to mean 9 the exposure of the exchange-traded derivatives 10 and the collateral supporting them. 11 Q. Do you consider the exchange-traded 12 derivative and the margin to be the same thing, 13 sir, or different? 14 MR. STERN: Objection to the form. 15 A. Margin is posted -- I don't know. I 16 mean, I never -- you know, the exchange-traded 17 derivatives -- the way the OCC -- if the OCC -- 18 the OCC has a number of contracts and it has some 19 collateral accounts that are supporting the 20 exchange-traded derivative positions. It is very 21 difficult to separate them because every day, the 22 contracts go up in value or down in value. Some 23 of the -- if they go down in value, that consumes 24 margin. 25 Q. Is that true for long positions as</p>	<p style="text-align: right;">Page 235</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 well as short positions, sir? 3 MR. STERN: Objection to the form. 4 A. Yes, again, back to a long put 5 position or a long position that goes down in 6 value consumes margin. A short position that -- 7 where the underlying goes down in value increases 8 margin. I don't really know how to separate them. 9 And I have to say that I didn't particularly dwell 10 on it afterwards. I just knew if we had open 11 exchange-traded derivative positions and we 12 ignored them, they were at risk of consuming all 13 the margin. And at the some point, the exchange 14 would close us out. 15 (Exhibit 393-B, e-mail dated Friday, 16 19 September 2008 at 00:57:45 marked for 17 identification, as of this date.) 18 Q. Mr. King, I have put before you a 19 one-page e-mail that I have marked as Exhibit 20 393-B. Could you take a quick look at it and let 21 me know when you have done so, please. 22 A. Right. Yeah. 23 Q. Do you recall this document, sir? 24 A. No. 25 Q. It appears to be an e-mail exchange</p>
<p style="text-align: right;">Page 236</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 between you and Mr. Clackson and Mr. Mahon, 3 correct? 4 A. Yes. 5 Q. And initially you write to 6 Mr. Clackson on September 18 at around 8:30 in the 7 evening, you say, "Why don't we add the initial 8 margin on the repos," and then a few hours later, 9 you say, "Sorry, I meant exchange and clearing 10 houses." 11 A. Right. 12 Q. Can you tell me what you mean when you 13 wrote those words, sir? 14 MR. STERN: Objection to the form. 15 A. I don't remember the -- is that at 16 1:30 a.m.? 17 Q. I believe so. The document was 18 produced to me by Barclays. I don't know whether 19 that is a GMT Time or Eastern Standard Time. 20 Perhaps Jack could enlighten us. 21 A. One is 12:57 GMT on Friday. 22 MR. STERN: What is the question? The 23 question is what he meant when he wrote 24 those two sentences to Mr. Clackson? I 25 think he has answered that. Is there</p>	<p style="text-align: right;">Page 237</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 another question? 3 Q. Sure, let's try it again. 4 Do you know what you meant when you 5 wrote those two sentences to Mr. Clackson? 6 A. Not without a context. 7 Q. What context would you need to answer 8 this question, sir? 9 MR. STERN: Objection to the form. 10 A. If I write a sentence like, Why don't 11 we add the original margin on the repos, I don't 12 know what I am talking about adding it to. Both 13 Patrick and Paolo are on the accounting side of 14 the firm. Paolo was at Lehman. So I don't know 15 whether -- without knowing what the starting point 16 of this is, this may have had to do a, you know, 17 an aggregate asset value question or -- I don't 18 know. I actually don't know. 19 Q. Could you be suggesting to 20 Mr. Clackson that the initial margin at the 21 exchanges and clearing house be added to the 22 transaction between Barclays and Lehman? 23 MR. STERN: Objection to the form. 24 A. I find that very unlikely since I 25 wasn't part of that discussion. But I don't know.</p>

<p style="text-align: right;">Page 238</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. Mr. Clackson replies, "Agreed. Paolo</p> <p>3 is saying the right stuff." Do you have an</p> <p>4 understanding of what Mr. Clackson said when he</p> <p>5 wrote that to you?</p> <p>6 A. I assume he is referring to -- I mean,</p> <p>7 I would only know one Paolo that's even remotely</p> <p>8 associated with this transaction. So other than</p> <p>9 that, I don't know, no.</p> <p>10 MR. STERN: I'll note again that my</p> <p>11 understanding is that we produced documents</p> <p>12 with Bates numbers except for the Felder</p> <p>13 documents that we produced at the very</p> <p>14 beginning. So again, I don't know why you</p> <p>15 are marking documents without Bates numbers</p> <p>16 and I will note that for the record and we</p> <p>17 will investigate it after the deposition.</p> <p>18 MR. OXFORD: Sure, I would appreciate</p> <p>19 if you would.</p> <p>20 MR. STERN: I will investigate it with</p> <p>21 you because I don't know where you are</p> <p>22 getting things if they are not Bates</p> <p>23 numbered.</p> <p>24 MR. OXFORD: It is my information that</p> <p>25 we pulled these directly from your</p>	<p style="text-align: right;">Page 239</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 production, Jack.</p> <p>3 MR. STERN: I don't think that's</p> <p>4 accurate, but we will talk about it after</p> <p>5 this.</p> <p>6 (Exhibit 394-B, e-mail dated 9/19/2008</p> <p>7 at 9:41 p.m. with attachment marked for</p> <p>8 identification, as of this date.)</p> <p>9 Q. Mr. King, you have in front of you</p> <p>10 what I have marked as Exhibit 394-B.</p> <p>11 A. Right.</p> <p>12 Q. And I am going to ask you primarily</p> <p>13 about the e-mail rather than the attachment,</p> <p>14 though of course you are welcome to take such time</p> <p>15 as you need to look at the attachment as well.</p> <p>16 A. Right.</p> <p>17 Q. I note you are directing your</p> <p>18 attention to Exhibit 393-B. I don't have any more</p> <p>19 questions for you at this time, so if you could</p> <p>20 focus your attention on 394-B, that would probably</p> <p>21 be most expeditious.</p> <p>22 A. Right.</p> <p>23 Q. Do you recall this document, sir?</p> <p>24 A. No.</p> <p>25 Q. No? You see that Mr. Yang sends to</p>
<p style="text-align: right;">Page 240</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 you and others a spreadsheet that appears to be</p> <p>3 titled, "Top Derivatives Position By Position" --</p> <p>4 A. Right.</p> <p>5 Q. "9/18/08." Do you have an</p> <p>6 understanding of what that spreadsheet is, sir?</p> <p>7 A. I don't remember it, sorry.</p> <p>8 Q. I don't need to ask you anything else</p> <p>9 on that. If you could put that to one side</p> <p>10 please.</p> <p>11 This has previously been marked as</p> <p>12 Exhibit 95-B. I'll save you a little time,</p> <p>13 Mr. King, your name is not actually on this</p> <p>14 e-mail. If you could take a look at the e-mail</p> <p>15 and the attachment and see whether you have</p> <p>16 seen this document before, please.</p> <p>17 MR. STERN: Read through all the</p> <p>18 e-mails, please.</p> <p>19 Q. Yeah, I am sorry, I meant to say you</p> <p>20 are not on the ultimate e-mail chain, but you do</p> <p>21 appear earlier down the e-mail chain. So I have</p> <p>22 some questions for you about that.</p> <p>23 MR. STERN: Read them all, starting</p> <p>24 from the bottom.</p> <p>25 THE WITNESS: It is essentially the</p>	<p style="text-align: right;">Page 241</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 same as the previous one.</p> <p>3 MR. STERN: It could be.</p> <p>4 A. Yup.</p> <p>5 Q. I would like to direct your attention</p> <p>6 first to the third page of this exhibit, sir.</p> <p>7 Near the top of the page, at 11:18 a.m. on Sunday,</p> <p>8 September 21, you write to a group of people</p> <p>9 regarding "Net Long Options, 9/18" and you address</p> <p>10 it to somebody who appears to be called Lily</p> <p>11 McInemey. Do you see that?</p> <p>12 A. Yup.</p> <p>13 Q. And you say, "Lily, what I am trying</p> <p>14 to be sure about is that we have a clear list of</p> <p>15 exchange-traded positions (options, futures, et</p> <p>16 cetera) as of Friday close. Need this today.</p> <p>17 Very important. Also, I need to know what the net</p> <p>18 margin is at the relevant clearing house and</p> <p>19 whether that reflects the Friday close marks.</p> <p>20 What is your number. Either Tim or I will call</p> <p>21 you."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall this document, sir?</p> <p>25 A. I don't. I remember a lot of the</p>

<p style="text-align: right;">Page 242</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 dialog around this time, but I don't remember 3 this. I don't remember the -- this particular 4 exchange.</p> <p>5 Q. You do or you don't?</p> <p>6 A. I don't remember this particular 7 exchange, but I remember a lot of the things that 8 were going on at this time.</p> <p>9 Q. Can you tell me, please, why you are 10 requesting this information from Lily?</p> <p>11 A. Yeah, I don't remember who Lily was 12 actually, so I'm not sure why I am requesting it 13 from Lily in particular. If you remember what 14 I -- further down at the bottom, it says, it is 15 from me to Gerard Reilly, "Don't forget, we only 16 want the exchange-traded options positions, not 17 the OTC."</p> <p>18 I don't -- I actually, for some reason 19 in my head, I don't know if I described this 20 earlier, I thought about the exchange-traded 21 positions as not really starting work on those 22 until after the Monday. But evidently, I 23 started work on them towards the end of that 24 week and so that's just a -- my -- if this 25 helps to clarify that it must have been earlier</p>	<p style="text-align: right;">Page 243</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 on that I started to become aware of it, and so 3 I -- and that may have come out of the earlier 4 comments about the asset purchase agreement 5 when I started to think about the 6 exchange-traded derivatives position.</p> <p>7 There have been a number of things 8 that have been happening simultaneously. Gary 9 Romain started to put a balance sheet together. 10 My increasing role on managing the overall risk 11 of the transaction -- sorry, overall risk of 12 all of the assets that were coming on to the 13 balance sheet, and Gary started to put the 14 acquisition balance sheet together.</p> <p>15 And what we had discovered was that we 16 had no way of producing -- I alluded to this 17 earlier -- we had no way of producing risk for 18 just the exchange-traded derivatives positions. 19 In fact, Barclays wasn't capable of booking the 20 exchange-traded derivatives positions. We 21 didn't have the technology systems. One of the 22 things we were acquiring from Lehman was the 23 businesses -- Jerry Dineen's and I think some 24 of these people were Jerry Dineen's people 25 associated with the equities trading business</p>
<p style="text-align: right;">Page 244</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 and this is one of the few occasions where we 3 really had to use a combination of Lehman 4 people and Barclays people to ascertain the 5 risk and the values.</p> <p>6 Unfortunately, the Lehman people had 7 this amalgam of OTC and exchange-traded 8 derivatives position in their risk system, so 9 they couldn't tell us just the exchange-traded 10 derivatives positions. I remember -- and I 11 think this e-mail may be the start of it, and 12 it probably was over that weekend, that I 13 worked out that I could estimate the risk of 14 the exchange-traded derivatives positions by 15 the change in the margin. What I was saying to 16 you earlier about the fact that it is 17 impossible to separate margin from an 18 exchange-traded derivative position.</p> <p>19 The change in the margin, which is the 20 cash posted plus the current market value, 21 liquidation value of the, the in-the-moneyness 22 of the contract -- sorry, the mark on the 23 contract -- if you added all of that up for a 24 book, all of that up on the OCC, you would know 25 whether it was moving -- whether your book was</p>	<p style="text-align: right;">Page 245</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 overall long or short with respect to an 3 underlying market. And I think that's what I 4 am starting to do here with this dialog.</p> <p>5 So it is a combination of, one, 6 looking at Gary Romain's balance sheet and saying, 7 hold on, Gary actually has OCC clearing house 8 money on the balance sheet as an asset that we are 9 acquiring, is that a volatile number.</p> <p>10 My responsibility is to advise the 11 firm whether it has volatility, whether it has 12 risk, economic risk. So it has the OCC. In 13 fact, I don't know which exhibit it was which 14 had the first draft of the balance sheet, but 15 that was dated the first draft that you showed 16 me that was on the 22nd, wasn't it? I think it 17 was on the 22nd.</p> <p>18 So around that time, the balance sheet 19 was becoming available that has the clearing 20 house collateral on it. And we were trying to 21 ascertain the risk before Lehman -- before we 22 were able to actually book the trades because 23 Barclays couldn't book the trades. So we had 24 to do it by estimating change in the margin at 25 the OCC.</p>

<p style="text-align: right;">Page 246</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 MR. STERN: He is referring to 390-B. 3 A. Right. So this has -- does this have 4 the OCC on it? Maybe it doesn't -- derivatives, 5 it says derivatives, exchange-traded options. So 6 that's where -- that's I think what was going on 7 here, that we had to start to try to work out what 8 we got. We didn't know what we had got at this 9 point. 10 Q. Mr. King, over the weekend of the 20th 11 and 21st of September, did you come to a 12 conclusion as to the risk in the OCC positions? 13 A. No. We -- not -- again, as I said 14 earlier in response to another question that 15 suggested that I came to a conclusion, a 16 conclusion we managed to come to several days or 17 weeks later. What we were able to determine was 18 that we had a net open position. 19 On the Friday morning, we had -- I 20 mean, add the pieces up on Friday morning -- 21 this was an incredible time. On the Friday 22 morning, we wake up to find out that we are 23 long 8 billion dollars of cash equities; that 24 we have just lent money against, among other 25 things, an 8 billion dollar portfolio of cash</p>	<p style="text-align: right;">Page 247</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 equities. Then we realize that, you know, we 3 have open exchange-traded derivatives positions 4 that are live that aren't closed out, as -- I 5 find out Tim Stack used to be in prime 6 brokerage. You start to see we could get the 7 OCC information statements for Friday, this is 8 from Francis Pearn, Francis. We can get the 9 OCC statements for Friday and determine if 10 these contracts are still outstanding. We 11 didn't know whether or not the contracts that 12 we had were outstanding, how substantial they 13 were. Early in that -- and the equity markets 14 are closed. The equity markets are closed. 15 MR. STERN: What do you mean by cash 16 positions? 17 A. Cash, people refer to cash equities to 18 refer to the -- it, you know, to the individual 19 equity publicly traded equity positions, Barclays 20 stock, IBM stock. 21 MR. STERN: I see. 22 A. AT&T stock. That's what I mean by 23 cash equities, they are exchange-traded. They are 24 exchange-traded cash instruments. 25 This derivatives position was a</p>
<p style="text-align: right;">Page 248</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 mixture of index derivatives, i.e., referencing 3 S&P, you know, mostly S&P and also individual 4 stock equities, so it was IBM, so it was perfectly 5 reasonable what -- and Lehman had a very active 6 equity derivative business which means they may 7 well be hedging equity derivative positions with 8 cash equities. So it was a perfectly reasonable 9 thing for them to assert that they were -- why on 10 earth did they have this 8 billion dollar long 11 cash equities position. Well, it might be because 12 it is hedging our equity derivative position. 13 That turned out not to be true or at least the 14 index derivative position was even larger than the 15 single named derivative position, so the net delta 16 on the exchange-traded derivatives position was 17 long about 3 billion dollars. 18 And what we were trying to get here 19 was a handle on what that risk was. 20 Q. I appreciate that answer. I think it 21 may set a record for longest answer in these 22 depositions. 23 A. It was a difficult problem. 24 Q. I'm sure it was. 25 At any time did you come to a</p>	<p style="text-align: right;">Page 249</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 conclusion as to the risk of Lehman -- 3 withdrawn. 4 At any time, Mr. King, did you have 5 come to a conclusion as to the risk, if any, 6 that Barclays was assuming by taking on the 7 exchange-traded derivatives positions of 8 Lehman? 9 MR. STERN: Can I hear the question 10 again. 11 (Record read) 12 MR. STERN: Objection, asked and 13 answered. 14 Go ahead, you can answer again. 15 A. Didn't I just answer that? 16 Q. No. 17 MR. STERN: I think you did, but you 18 can try again. 19 A. I can try it again with another very 20 long answer. 21 Q. Can you try it with a short answer? 22 MR. STERN: No -- 23 A. No, I didn't come to a conclusion. We 24 started to manage it and eventually closed out all 25 the exchange-traded derivatives positions.</p>

<p style="text-align: right;">Page 250</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. Did Barclays undertake any analysis, 3 to your knowledge, at any time as to whether 4 Barclays made a net gain or loss on the 5 exchange-traded derivatives positions they assumed 6 from Lehman? 7 MR. STERN: Objection to the form. 8 A. No. 9 MR. STERN: Let me hear it again. 10 (Record read) 11 MR. STERN: Objection to the form. 12 Try to answer that. "At any time." 13 A. Do you -- do you mean over the life of 14 the exposure to the exchange-traded derivatives 15 positions? 16 Q. Yes, at any time from September 19 to 17 date? Or I should say, September 19, 2008. 18 A. I don't think we ever thought we 19 isolated it in that way. 20 Q. You asked Lily in what I have marked 21 and has been marked previously as 95-B what the 22 net margin was at the relevant clearing house. Do 23 you recall ever receiving an answer to that 24 request? 25 A. I don't remember receiving the answer</p>	<p style="text-align: right;">Page 251</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 specifically. The reason for wanting to know, as 3 I said, was, one, to go into the -- that it would 4 be relevant to the acquisition balance sheet as a 5 purchased asset. And two, to assess the change in 6 it so we could estimate the risk. 7 Q. When you say net margin, Mr. King, 8 what do you mean by net margin? 9 A. The margin posted at the exchange, at 10 the clearing house. 11 Q. Is it net of something? 12 A. The long/short positions. 13 Q. I am sorry, can you explain that a 14 little further. 15 A. I think -- 16 MR. STERN: Objection to the form. 17 A. The OCC referred to net -- I think it 18 was an OCC -- I think originally it was an OCC 19 description which was cash, securities and PV 20 on -- the present value on the derivative 21 positions, that's the net. 22 Q. And the answer you just gave me is 23 what you understand to be the OCC's definition of 24 the term net margin, sir? 25 MR. STERN: Objection to the form.</p>
<p style="text-align: right;">Page 252</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. No, what I said was that is how I use 3 it and I remember -- I seem to remember it 4 being -- the genesis of it was it was actually an 5 OCC term. Whether it is a defined term or not, I 6 don't know. 7 Q. If you can go to the front page of 8 Exhibit 95-B, sir. You're not on the chain at 9 this stage, but if you could just read the first 10 e-mail that begins, "Craig Jones provided the OCC 11 statements as of September 22 for the LBI 074 12 account." 13 A. Yeah. 14 Q. Do you ever recall learning the 15 information that's contained in that paragraph? 16 A. I -- at various times, I knew the 17 balances of the margin that was in the OCC because 18 it was what we were using, one, to provide to Gary 19 Romain for the balance sheet and, two, to estimate 20 the daily change in risk. I don't remember these 21 numbers specifically, but at various times I came 22 into contact with the amount of margin that was in 23 the OCC was a very important number to us. 24 Q. Do you have an understanding whether 25 the numbers reflected in that paragraph are the</p>	<p style="text-align: right;">Page 253</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 net margin numbers that you had asked Lily for? 3 A. I -- I don't think -- did you say I 4 wasn't on the e-mail? 5 Q. Yes, and I understand that, but I am 6 asking you sitting here today, do you have an 7 understanding of whether the numbers referenced on 8 the front page of Exhibit 95 represent the net 9 margin that you had asked Lily for on Sunday, the 10 21st of September? 11 A. It says it is an OCC statement. We 12 did use the OCC statements and I remember some of 13 the sheets at the back, not these ones in 14 particular necessarily, but ones that look very 15 similar to it that were being used. 16 But you know, one thing that I would 17 ask you to bear in mind is that I was running a 18 very substantial risk book with a large number 19 of people that either reported directly to me 20 or were seconded to me. Much of this kind of 21 material was processed before it got to me. I 22 may have been copied on it, but if there is 23 only one number in here that turns out to be 24 relevant, then somebody may have processed that 25 for me into a form that I could consume.</p>

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1 KING - HIGHLY-CONFIDENTIAL 2 This was just one of many streams of 3 risk management valuation, operational process 4 risk management that we were undertaking 5 simultaneously. 6 Q. Do you recall any particular members 7 of your team who would have processed that 8 information for you? 9 A. A variety of people. 10 Q. Can you give me the names of that 11 variety of people? 12 A. For example, Jasen Yang. 13 Q. Would Tim Stack also have been one of 14 those individuals? 15 A. Tim Stack actually was -- Tim Stack 16 doesn't work for me, but Tim Stack was -- Tim 17 Stack, not really. Tim Stack was more -- Tim and 18 I almost had different objectives. 19 Tim's job was at the time really 20 customers and mine was really proprietary. So 21 whatever Tim wanted in his world, almost by 22 construction wouldn't have been in my world, 23 and vice versa. So we wanted to separate our 24 two worlds. Then he could get on with dealing 25 with customers and customer accounts and I	1 KING - HIGHLY-CONFIDENTIAL 2 could get on dealing with the net exposure that 3 the bank had to the -- what were called the 4 proprietary accounts at the clearing house and 5 exchanges. So 074, for example, was one that I 6 remember and we spent a lot of time on 074. 7 (Exhibit 395-B, document Bates stamped 8 BCI-EX-S 57416 through 417 marked for 9 identification, as of this date.) 10 Q. Mr. King, I have handed you what I 11 have marked as Exhibit 395-B, which on this 12 occasion I am able to identify for the record as 13 having a Barclays Bates stamp BCI-EX-S 00057416 14 through 417. Can you let me know when you have 15 had a chance to review that, please. 16 A. Um-hm. 17 Q. Could you recall this document, sir? 18 A. Again, this is just an e-mail 19 exchange. I remember lots of dialog with -- 20 Q. I am sorry, I didn't mean to cut you 21 off. 22 A. I remember lots of dialog with Nick. 23 I just don't remember this traffic in particular. 24 Q. When you say Nick, do you mean to 25 refer to Nick --
1 KING - HIGHLY-CONFIDENTIAL 2 A. Nick Moreira. 3 Q. Do you tell me who Nick Moreira was, 4 please? 5 A. Nick Moreira was a Barclays employee 6 who we -- again, who doesn't work for me but who 7 was made available to me to facilitate the risk 8 management of the exchange-traded derivatives 9 position. 10 Q. There is a reference at the bottom of 11 the page to a call, you're asking Michael 12 Schmanske to join? 13 A. Um-hm. 14 Q. Who is Michael Schmanske? 15 A. I don't know his position. If I 16 remember correctly, Mike -- he was a Lehman 17 employee and he worked somewhere in Jerry Dineen's 18 equity world and I think was the sort of middle 19 office or desk operations person who we had been 20 pointed to towards being able to help us 21 understand what the exchange-traded derivative 22 positions were. 23 Q. OK. Do you recall in general terms 24 what was discussed on that call? 25 A. Which one was this? Monday at 3 in	1 KING - HIGHLY-CONFIDENTIAL 2 the afternoon. More of the same discussion how do 3 we get a handle on what the net positions are on 4 the exchanges. 5 Q. There is a reference in your e-mail, 6 you say if there is anyone there who has an 7 overall view, then I suggest they join. 8 A. Yeah. 9 Q. Do you remember whether anyone in 10 particular joined that call in response to your 11 suggestion that someone with an overall view join? 12 A. Not on that call I think, although 13 this was a -- this was a party that grew and grew 14 and grew for a while as we tried to work out how 15 we could get a handle on what the position was and 16 then it shrank back down to a much smaller number 17 of people in the end. 18 Q. Apart from Nick Moreira and Michael 19 Schmanske, who else was involved in helping you 20 understand the risk associated with Lehman's OCC 21 related exchange-traded derivatives? 22 A. I mean there is a -- I don't even 23 remember all of the names of them. I mean, it is 24 many of the people that are copied on this e-mail, 25 like Tim Stack, obviously members of my team,

<p style="text-align: right;">Page 258</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Jasen and Sean, Nick Moreira, traders in Nick 3 Moreira's group, people in Jerry's team at Lehman, 4 operations people, compliance people. 5 I mean, it was a very substantial 6 number of people that were involved to make 7 sure that we had -- because we had a number of 8 issues. We had to determine -- we had tried to 9 estimate what the economic risk was in a second 10 so that we could manage it. We had to try and 11 work out how we could close out of the 12 positions and insure that we weren't closing 13 out client positions inadvertently. We had to 14 insure that we were operating within compliance 15 guidelines because these are public 16 exchange-traded derivative positions. So it 17 was a cumbersome process. 18 Q. Why were you trying to close out 19 positions at the OCC, Mr. King? 20 A. Because we didn't -- we had no desire 21 to have an open exchange-traded derivatives 22 position. These were naked -- this is naked risk. 23 Q. Can you explain what you mean by 24 "naked risk"? 25 A. It was not a risk that was -- that</p>	<p style="text-align: right;">Page 259</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 served any purpose. It is a -- it turned out it 3 was approximately -- I am only using this as 4 approximate because it was more complicated than 5 this, but it was -- the exposure behaved something 6 like being long three and a half billion dollars 7 of the S&P. That doesn't mean you had 3 and a 8 half billion dollars of value. It meant if there 9 was, say, 500 million dollars of margin against 10 those derivative positions and the index had 11 fallen 10 percent, then we could have run out of 12 margin. 13 Q. Were you, at any stage, Mr. King, 14 trying to transfer positions at the OCC? 15 MR. STERN: Objection to the form. 16 A. No. Other people were involved with 17 transferring customer-related stuff, but no, we 18 weren't involved. We had no -- again, coming back 19 to my role in this overall transaction was 20 valuation and risk management. Here we had 21 identified a risk and our job was to eliminate it. 22 We weren't trying to start a business or run 23 something. We just needed to eliminate it. 24 Q. Those other people you referenced who 25 were trying to transfer positions, was it customer</p>
<p style="text-align: right;">Page 260</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 positions at the OCC they were trying to transfer? 3 A. I -- yeah, there were some -- I 4 know -- I don't know anything about transfers at 5 the OCC or any of the futures exchanges or 6 anything else. All I know is that there was 7 separate discussions about it, but I wasn't party 8 to them. 9 (Exhibit 396-B, document Bates stamped 10 BCI-EX-S S8711 through 114 marked for 11 identification, as of this date.) 12 Q. Mr. King, you have in front of you 13 what I have marked as Exhibit 396-B, which is a 14 document produced by Barclays BCI-EX-S 00087112 15 through 114. 16 A. Yes. 17 Q. Do you recall this document, sir? 18 A. Not this document. Again, I'm -- you 19 know, I'm involved in the exchange, so I loosely 20 remember the exchange. 21 Q. Turning your attention to the third 22 page of the document, the bottom of the e-mail 23 chain appears to be an e-mail from you on 24 September 30 at 1:24 p.m. to Nick Moreira and 25 others. Do you see that?</p>	<p style="text-align: right;">Page 261</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. Yes. 3 Q. "Subject: MM, LBI and LBSF options." 4 Do you see that? 5 A. Yes. 6 Q. What does MM stand for? 7 A. I don't remember. 8 Q. LBI is presumably Lehman Brothers 9 Incorporation? 10 A. Yeah. 11 Q. What does LBSF stand for? 12 A. It was another one of the Lehman 13 Brothers entities. I am trying to remember what 14 MM is. 15 Q. And you will see you are asking Nick 16 Moreira and others for the current MV of for 17 each -- 18 A. Yeah. 19 Q. -- each of the buckets of options? 20 A. Um-hm. 21 Q. And if you turn to the second page 22 1173, Lucas, Thierry provides the answer to you, 23 do you see that? 24 A. Yes. 25 Q. And you reply, "So I guess this is the</p>

<p style="text-align: right;">Page 262</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 liability. What's the asset. Must be the margin, 3 how much do we have?" Do you see that? 4 A. Yup, yup. 5 Q. Can you explain what you meant by that 6 answer? 7 A. No, not particularly. I would have to 8 work through what it was. Yeah, Thierry worked 9 for Nick Moreira. Thierry was an equity 10 volatility trader, and he was assisting me in the 11 hedging and identification and estimation of the 12 risk of the exchange-traded derivatives positions. 13 And what is kind of evident in some of 14 these exchanges is that MM was market maker. 15 So MM was market maker. So would effectively 16 have been there for those -- the market maker 17 positions, just outright, net proprietary 18 positions. 19 Q. OK, so MM would be proprietary 20 positions, correct? 21 A. Yeah. 22 Q. LBI is also proprietary positions? 23 A. Yeah, I think that was again an OCC 24 definition. There weren't customer positions. 25 There were two types of proprietary positions.</p>	<p style="text-align: right;">Page 263</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 One were the market maker positions, one were 3 proprietary trading positions. The OCC had 4 slightly different classifications for them, but 5 effectively they both behaved as if they were just 6 crude risk positions that would look like 7 proprietary positions from Barclays' point of 8 view. 9 Some of the discussions about these 10 highlight that some of this area, 11 exchange-traded derivatives, was about as far 12 from our normal trading products suite as we 13 could get, and therefore, we are learning the 14 language as we go along and some of that 15 language is even mathematical. Thierry was an 16 options trader and you will notice that all of 17 the numbers that he provides me are negative. 18 The parentheses imply that they are negative. 19 So I guess this is -- the liability is 20 referring to the fact that Thierry has provided me 21 a string of negative numbers. And at various 22 times, that would scare me a great deal because 23 not knowing much about exchange-traded 24 derivatives, did this mean that somebody owed the 25 exchange 1.2 billion dollars.</p>
<p style="text-align: right;">Page 264</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 So therefore, I say what is the asset, 3 must be the margin, how much do we have. That 4 plays back to the comment that I made about the 5 net margin, the derivatives themselves can be 6 in or out of the money and, therefore, they 7 could have a positive or negative value that 8 needs to be added to the collateral. And I 9 think that's what that sentence is 10 highlighting. 11 Q. Over the page on the bottom of the 12 first page of the document, you appear to 13 calculate an excess of 426? 14 A. Yes. 15 Q. Do you see that? 16 A. Yes. 17 Q. Do you know what that's a reference 18 to? 19 A. So I think that highlights -- this is 20 about three days of my life that I wouldn't mind 21 not remembering because it wasn't straightforward. 22 The 1.14, if we added up the three 23 line items that Thierry had sent me, 1.061, 24 .5, .045, .034, all measured in billions, that 25 sums to approximately 1.14 billion. And that</p>	<p style="text-align: right;">Page 265</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 would appear to me to be the contract amount. 3 The 942 and 624 on the page over is provided by 4 Sean, total OC margin for firm book. Firm book 5 was what MM and LBI, I can't remember exactly 6 how it was broken out for 9.2, and then 623 is 7 the MM book. So 623 plus 942 adding up to 8 1.566. 9 So that's then the margin. So the 10 excess margin, the net margin is .426 million. 11 So that would end up being an estimate because 12 we were just getting our heads around it, but 13 it highlights what I was saying. I wouldn't 14 know -- when you asked me would I interpret 15 exchange-traded derivatives to mean margin and 16 contracts, I wouldn't know how to separate 17 these as that calculation shows. 18 Q. If I understand your answer correctly, 19 you are defining net margin as excess of margin 20 over the contract amount? 21 A. I think that's right. I think that's 22 right. I'm not sure I intended to define it as 23 such, but I believe if I was doing the same thing 24 as I did then, I would have called those 25 synonymous.</p>

<p style="text-align: right;">Page 266</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. This net margin that you estimated,</p> <p>3 426, that's 426 million dollars, sir?</p> <p>4 A. Sorry? That would be millions.</p> <p>5 Q. This figure is 426 million?</p> <p>6 A. Yes, by induction by from the other</p> <p>7 pages.</p> <p>8 Q. What happened to that 426 million,</p> <p>9 Mr. King?</p> <p>10 A. I don't know.</p> <p>11 Q. Would it have gone to Barclays?</p> <p>12 A. I see the OCC margin as an item on the</p> <p>13 balance sheet, so that was my understanding.</p> <p>14 Q. And it is an item under assets in the</p> <p>15 balance sheet, correct?</p> <p>16 A. It would be an asset, yes.</p> <p>17 Q. Was a similar exercise to calculate</p> <p>18 the net margin at OCC done for other options</p> <p>19 beyond those three buckets of options described in</p> <p>20 what I have marked as Exhibit 396-B?</p> <p>21 A. There were various others as well.</p> <p>22 Q. Who performed that analysis or those</p> <p>23 analyses?</p> <p>24 A. We did, but this I seem to remember</p> <p>25 was the largest one. For example, I think</p>	<p style="text-align: right;">Page 267</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 somebody alludes to it in here, Thierry alludes to</p> <p>3 the VIX options. Yeah, I'm working with a futures</p> <p>4 team, Liz and James. Futures were treated as</p> <p>5 separately from us just because we didn't -- it</p> <p>6 wasn't the same risk management issue. Determine</p> <p>7 net remaining margin on the LBF VIX futures book,</p> <p>8 OCC 084. That's alluding to go 084. I think this</p> <p>9 was all dealing with O74, wasn't it? I think it</p> <p>10 was 074.</p> <p>11 Q. Was your team, Mr. King, responsible</p> <p>12 for calculating the net margin on any options at</p> <p>13 OCC other than those discussed in this e-mail</p> <p>14 marked as Exhibit 396B?</p> <p>15 A. A bit like I described earlier, that</p> <p>16 there was some things on the cash assets that were</p> <p>17 undertaken by my group and others that were --</p> <p>18 other activities that were coordinated where the</p> <p>19 relevant trading desk at Barclays undertook</p> <p>20 responsibility and then we performed an</p> <p>21 aggregating role.</p> <p>22 The same is true here. We provided a</p> <p>23 conduit, in the early days, not in the late</p> <p>24 days, but in the very early days of</p> <p>25 facilitating just the process management around</p>
<p style="text-align: right;">Page 268</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 identifying all of the margin that was</p> <p>3 available in all of the accounts. But later</p> <p>4 on, you know, as quickly as we possibly could,</p> <p>5 we pushed those responsibilities back into</p> <p>6 their respective business units.</p> <p>7 Q. OK. Aside from the three buckets of</p> <p>8 options described in this Exhibit 396-B, and other</p> <p>9 than the aggregating role that you have just</p> <p>10 testified to, did your team have responsibility</p> <p>11 for calculating net margin on any other groups of</p> <p>12 options at OCC or elsewhere?</p> <p>13 A. We didn't ever -- I don't think we</p> <p>14 ever -- yeah, I'm not sure we ever really</p> <p>15 calculated net margin for anything like this. I</p> <p>16 mean, I am doing it very crudely here in this</p> <p>17 e-mail, but for the most part we would have just</p> <p>18 been aggregating, as Sean does on the second page,</p> <p>19 information that was coming from other sources</p> <p>20 within the bank and us trying to interpret it and</p> <p>21 then forward that on in a more manageable form to</p> <p>22 product control before product control was able to</p> <p>23 take on the process directly themselves.</p> <p>24 Q. For what purpose did you do this net</p> <p>25 margin calculation, sir?</p>	<p style="text-align: right;">Page 269</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. I don't remember why I did it here. I</p> <p>3 did this calculation or people who work for me,</p> <p>4 when I say I, did it repeatedly initially to find</p> <p>5 out whether what the size of the asset was that we</p> <p>6 would then report on to product control for</p> <p>7 inclusion on the acquisition balance sheet, and</p> <p>8 two, to estimate the daily change so that we could</p> <p>9 estimate our risk.</p> <p>10 Q. Do you have a recollection, Mr. King,</p> <p>11 of the aggregated net margin that was forwarded by</p> <p>12 your group to product control for inclusion on the</p> <p>13 acquisition balance sheet or otherwise?</p> <p>14 A. It was a very volatile number. I</p> <p>15 don't remember what it was from day-to-day. I</p> <p>16 think in a week following -- in the week following</p> <p>17 the first Lehman bankruptcy there was about a 15</p> <p>18 percent decline in the equity market and then</p> <p>19 there was a rally and there was, you know, so the</p> <p>20 volatility of this number is measured in hundreds</p> <p>21 of millions of dollars a day, and even that risk</p> <p>22 number changes actually as the market itself</p> <p>23 moved. So I don't remember the numbers. In fact,</p> <p>24 I didn't ever really care about the numbers. All</p> <p>25 I cared was that the numbers were current and</p>

1 KING - HIGHLY-CONFIDENTIAL 2 accurate. 3 MR. STERN: Let's pause here for a 4 second. 5 (Pause) 6 Q. Mr. King, I have handed you what has 7 previously been marked as 377A. If you could take 8 a look at that and I am primarily asking you about 9 pages 2 and 3, although you are, of course, 10 welcome to review the full document. 11 A. OK. 12 Q. Do you recognize that document, sir? 13 A. I haven't seen the document before. 14 I've seen, at various times, I've seen forms of 15 the spreadsheets that are shown on page 2 and 3. 16 Q. If I were to describe page 1 as the 17 acquisition balance sheet, would that comport with 18 your understanding? 19 A. I actually think of page 2 and 3 as 20 summaries of the acquisition balance sheet, but 21 column D sums to the same as column C on page 2 22 and so the first spreadsheet is a reorganized 23 version of the second and third spreadsheets I 24 think. 25 Q. Do you have any involvement, Mr. King,	1 KING - HIGHLY-CONFIDENTIAL 2 in providing any information that was used to 3 compile Exhibit 377A or any subpart of it to your 4 knowledge? 5 A. Do you have a date on these? 6 Q. I don't think there is an embedded 7 date. 8 A. 390-B was dated on the 22nd and is a 9 -- is called the Long Island Acquisition Summary 10 and it -- certainly the second page of 377-A that 11 you have just shown me is just a later form of 12 390-B. 13 Q. And focusing in particular on the 14 references to OCC on pages 2 and 3 of Exhibit 377, 15 sir? 16 A. Right. 17 Q. If you look on the second page in line 18 I8? 19 A. Yes. 20 Q. You will see there is a reference OCC 21 customer and clearing margin which in column C 22 appears to be .89 billion. Do you see that? 23 A. Yes. 24 Q. To your knowledge, sir, were you 25 involved in providing any information or
1 KING - HIGHLY-CONFIDENTIAL 2 calculating that figure? 3 A. That number and the -- I remember 4 there was an error in -- there was some -- again, 5 there is an even later version of this where some 6 of these were reorganized, but, for example, 7 the -- for example, this one now includes what was 8 called the JP Morgan inventory of 3.92 and 9 settlement of 1.25. 10 So this one starts to show that we 11 didn't receive the 7 billion of cash that was 12 shown on the balance sheet that was as of the 13 22nd that shows how there were iterations of 14 this as things became clearer, including the 15 fact that we weren't going to receive 16 everything that we expected to receive. 17 The 0.98 and the exchange rate options 18 0.21, I remembered again those were later revised 19 because they -- the combination of that, the 20 futures, customer balances and the exchange-rated 21 options numbers weren't being calculated right for 22 some reason. But yes, the calculation you just 23 asked me about, the 457, I don't remember how we 24 got to where we did, but -- where is the 457, was 25 that in Exhibit 396-B was an example of	1 KING - HIGHLY-CONFIDENTIAL 2 calculating that 0.98 number and the 0.21 -- 3 Q. The calculation, sir, in Exhibit 4 396-B, is it fair to say that that calculation was 5 a constituent part of the compilation of the 6 numbers reflected on pages 2 and 3 of Exhibit 377? 7 A. Because they are not time stamped -- I 8 mean, the one that you are showing me, see the 9 e-mail that you are showing me from Thierry Lucas 10 to me was on the 30th of September, so quite a lot 11 of time has passed between the 22nd. The balance 12 sheet we were first looking at is the 22nd. 13 I can't remember at what time we 14 started to work out where we were going to 15 split up the assets into different entities, 16 but you can see on page 2 of 377-A, that we had 17 started that process or the firm had started 18 the process of telling us where it wanted to 19 put different assets, but I don't know the time 20 stamps. So I don't know whether -- I actually 21 don't remember -- I absolutely don't remember 22 whether this would precede or follow the 23 estimate -- and whether they were even 24 complete, whether this one on the 30th was even 25 a complete number for the same, 0.98 and 0.21

<p style="text-align: right;">Page 274</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 on this or whether they were just different 3 times or whether they were different -- they 4 are related. There is a relationship between 5 them, but I don't know what it is.</p> <p>6 Q. And Jack will jump if he doesn't like 7 this, I feel sure. It is my understanding that 8 these are the final acquisition balance sheets 9 provided to Barclays accountants.</p> <p>10 A. These are at the end of the year? These are the December ones?</p> <p>11 Q. That is my understanding. 12 A. OK. 13 Q. Based on that understanding, does that 14 help you answer my question whether you or your 15 team was involved in providing these numbers that 16 appear on pages 2 and 3 of Exhibit 377-A, 17 specifically the OCC references?</p> <p>18 A. Not by this time. If this is the year end, then no.</p> <p>19 Q. Do you understand who would have been 20 involved in providing those numbers?</p> <p>21 A. By this stage? Product control, the 22 respective businesses, finance, et cetera. Our 23 involvement was providing the estimate at the time</p>	<p style="text-align: right;">Page 275</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 before we had the opportunity to fully integrate 3 the businesses.</p> <p>4 Q. The OCC entries on pages 2 and 3 have 5 slightly different language. Do you see that?</p> <p>6 A. Um-hm.</p> <p>7 Q. Page 2, line 18, it says, "OCC 8 customer and clearing margin." That's the .98 9 billion figure?</p> <p>10 A. Yup.</p> <p>11 Q. Do you see that?</p> <p>12 A. Yup.</p> <p>13 Q. Line 16 on page 3 says, "OCC margin 14 against exchange-traded options."</p> <p>15 A. Yeah.</p> <p>16 Q. Do you have any understanding of the 17 difference, if any, between those two 18 descriptions? Obviously the numbers are 19 different. The first figure on page 2 is .98 20 billion and the figure on page 3 is 1.31 billion. 21 But in terms of the assets described, do you have 22 an understanding of what they are and how they are 23 different?</p> <p>24 A. I was working through them. This one 25 has all of the -- they both have the unencumbered</p>
<p style="text-align: right;">Page 276</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 assets, valuation adjustment, total inventory -- 3 that's -- I wish my eyes were better.</p> <p>4 The 0.9 -- this is a -- this can't be 5 the final, by the way, because it says "draft" 6 at the top of that. I don't know what -- there 7 is a footnote 2 on page 2. It says, "These are 8 net amounts. The actual bookings are grossed 9 up to reflect the relevant assets, receivables 10 and payables. See net tab."</p> <p>11 So I would have to do the sums. But 12 on -- on the following page, there are also 13 references on row 42, for example, 14 exchange-traded options derivative mark to 15 market, derivative liabilities 1.1. So there 16 are numbers, there are OCC margin numbers in 17 the top, loans and advances to customers, and 18 then there are also numbers down in the assets 19 below. So I would have to do all of the math, 20 I would have to work out -- I could -- if I had 21 the spreadsheet, I could do it, but I don't 22 so--</p> <p>23 Q. That's fine. No need to trouble you 24 further on that one.</p> <p>25 Handing you what we have previously</p>	<p style="text-align: right;">Page 277</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 marked as Exhibit 51.</p> <p>3 A. In a minute, can I send an e-mail?</p> <p>4 Q. If you want to take a couple minutes. 5 (Recess)</p> <p>6 Q. Mr. King, you have in front of you 7 what has previously been marked as Exhibit 51. It 8 is the transfers and assumption agreement between 9 Barclays, the OCC and the SIPA trustee. Can you 10 tell me if you have seen this document before?</p> <p>11 A. No.</p> <p>12 Q. Have you ever had any discussions, of 13 course other than with counsel, about this 14 document?</p> <p>15 A. I don't think I have even had 16 conversations with counsel on it.</p> <p>17 Q. If you could turn to page 2, please, 18 and look at in particular 2C. Can you see that it 19 says, "Barclays hereby, one, represents and 20 warrants that it has received such documents and 21 other information as it has deemed appropriate to 22 make its own credit analysis and decision to enter 23 into this agreement."</p> <p>24 Do you see that?</p> <p>25 A. Um-hm.</p>

<p style="text-align: right;">Page 278</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 Q. I take it from your prior answers that</p> <p>3 you have no knowledge about any documents received</p> <p>4 or any credit analysis performed by Barclays</p> <p>5 pursuant to this agreement?</p> <p>6 MR. STERN: Objection to the form.</p> <p>7 A. No.</p> <p>8 Q. And you don't have any information</p> <p>9 about who at Barclays would have been involved in</p> <p>10 that credit analysis?</p> <p>11 A. No.</p> <p>12 Q. Do you have any information about who</p> <p>13 at Barclays was involved in the business decision</p> <p>14 to enter this agreement?</p> <p>15 A. No.</p> <p>16 Q. OK, that is all I have for that</p> <p>17 document.</p> <p>18 (Exhibit 397-B, document Bates stamped</p> <p>19 BCI EX-81185 marked for identification, as</p> <p>20 of this date.)</p> <p>21 Q. Mr. King, I have handed you what has</p> <p>22 been marked 397-B with Bates stamp BCI EX-81185.</p> <p>23 Can do you recognize this document, sir?</p> <p>24 A. I wrote it, but I don't remember it.</p> <p>25 But I remember thinking about this issue, but I</p>	<p style="text-align: right;">Page 279</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 don't remember the document specifically.</p> <p>3 Q. It is an e-mail from you to Rich Ricci</p> <p>4 on September 21 on Sunday morning around 10 a.m.,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Subject matter is TBS/DTC?</p> <p>8 A. Or TBA and DTC or subject is -- right,</p> <p>9 OK.</p> <p>10 Q. Can you tell me what "TBA" means in</p> <p>11 this context?</p> <p>12 A. I don't remember what "TBA" stands</p> <p>13 for. It means the government agency loan pools,</p> <p>14 government agency mortgage loan pools.</p> <p>15 Q. And DTC in this context?</p> <p>16 A. Is the DTC.</p> <p>17 Q. That's the Depository Trust and</p> <p>18 Clearing Corporation?</p> <p>19 A. Yes.</p> <p>20 Q. You say to Mr. Ricci on Sunday, "Have</p> <p>21 asked Jon Mahon and Sean McKenna (works with me)</p> <p>22 to work through issues on TBA and DTC."</p> <p>23 A. Yes.</p> <p>24 Q. Can you explain to me what you meant</p> <p>25 when you wrote that to Mr. Ricci?</p>
<p style="text-align: right;">Page 280</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 A. Yes, I think that we actually</p> <p>3 subsequently weren't particularly involved in</p> <p>4 this. Again, this was something that was new to</p> <p>5 us as a concept at that time. These TBAs are</p> <p>6 forward contracts on loan pools, as I described</p> <p>7 them, and they clear through the DTC, and the firm</p> <p>8 started to realize because Lehman was bankrupt,</p> <p>9 there were going to be a tremendous number of</p> <p>10 failed TBA settlements in the market and that was</p> <p>11 going to be extremely disruptive.</p> <p>12 No memory why I was particularly</p> <p>13 sending this one to Ricci or whether there was</p> <p>14 stuff preceding this or following this that was</p> <p>15 the reason why I sent it to him, but there was</p> <p>16 a concern about that.</p> <p>17 Q. Did Mr. Mahon and Mr. McKenna, in</p> <p>18 fact, help you work through the issues involving</p> <p>19 TBA and DTC?</p> <p>20 A. Actually, we ended up not being</p> <p>21 particularly involved in it. The -- I can't</p> <p>22 remember how we -- how the firm ended up resolving</p> <p>23 the issue, wasn't really a firm issue, it was a</p> <p>24 market issue, but we were trying to keep things</p> <p>25 functioning, keep markets as well as ourselves</p>	<p style="text-align: right;">Page 281</p> <p>1 KING - HIGHLY-CONFIDENTIAL</p> <p>2 operating as normally as possible and this was</p> <p>3 related to that.</p> <p>4 Q. Can you explain what you mean by you</p> <p>5 were trying to keep markets -- withdrawn.</p> <p>6 You said we were trying to keep things</p> <p>7 functioning and keep markets as well as</p> <p>8 ourselves operating as normally as possible.</p> <p>9 What do you mean by that?</p> <p>10 A. This is a -- rather than we had not</p> <p>11 historically been involved in, these TBA contracts</p> <p>12 settled through the DTC and if -- I can't remember</p> <p>13 exactly how it worked, but if we -- we needed</p> <p>14 to -- the firm needed to help as much as possible</p> <p>15 with allowing or the desire was to help as much as</p> <p>16 possible to allow trades that would otherwise fail</p> <p>17 settle. Because failed trades -- I mean, it is a</p> <p>18 very difficult -- has so many knock-on</p> <p>19 consequences and this was starting to realize</p> <p>20 there was a potential issue with failed trades on</p> <p>21 the Sunday, but I can't remember, you know, pretty</p> <p>22 much immediately following this, the issue sort of</p> <p>23 went away.</p> <p>24 Q. How did you come to learn that the</p> <p>25 issue went away, Mr. King?</p>

<p style="text-align: right;">Page 282</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 A. It just -- because it went away in the 3 market, the trades -- I cannot remember for the 4 life of me now how they were cleared, but the 5 trades were largely successfully cleared and some 6 failed. 7 Q. You go on to say, "Can't guarantee 8 failed trades on DTC. No way to size." 9 A. No way to size. 10 Q. Can you explain to me what that means? 11 A. I was alluding to the fact that there 12 was no way to size the cost associated with trying 13 to insure that all trades would clear through the 14 DTC in relation to these TBA pools. 15 Q. Did you have any understanding over 16 the weekend of September 20 and 21, sir, that DTC 17 was concerned about its liability in clearing 18 Lehman trades? 19 A. No, no. I only about know about it -- 20 I remember the trader, Tom Hamilton, for the flow 21 business asked me what are we going to do about 22 all these TBA trades that should be settling on 23 so-and-so date and we started thinking about it 24 and I can't remember how we concluded it, but it 25 was a -- it is a specific issue relating to TBA</p>	<p style="text-align: right;">Page 283</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 pools and it went on for about four days. I asked 3 Sean to help Tom with it. I largely delegated it. 4 They worked out a way to fix it and it was fixed. 5 Q. Did you ever hear, Mr. King, that DTC 6 asked Barclays to guarantee the Lehman trades at 7 DTC? 8 A. No, in relation to this TBA, no. 9 Q. Otherwise? 10 A. No. 11 MR. OXFORD: I don't think I have any 12 further questions for you at this time, 13 Mr. King. 14 With reference to what I believe are 15 inappropriate instructions from counsel, I 16 reserve my rights to resume questioning at 17 another time. 18 MR. STERN: Why don't we get started.</p>
<p style="text-align: right;">Page 284</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 some things we discussed earlier. 3 Throughout your testimony this 4 afternoon and this morning, you mentioned a 5 settlement with JP Morgan Chase and Barclays. 6 Could you let us know what settlement you are 7 referring to? 8 MR. STERN: You don't know that? You 9 don't know that? 10 Q. Let me clarify. We don't need all the 11 details. This is a settlement of a dispute in 12 regards to cash or securities that were supposed 13 to be transferred to Barclays as part of a sale 14 transaction that weren't transferred, correct? 15 MR. STERN: Wait a second. You know 16 what we are talking about, the December 17 settlement? 18 MR. DAKIS: That's fine. You can 19 define it any way you want to. I want to 20 make sure that the record is clear so my 21 follow-up questions are clear on the record. 22 MR. STERN: OK, go ahead. 23 Q. Can you read back that question. 24 (Record read) 25 MR. STERN: Objection to the form.</p>	<p style="text-align: right;">Page 285</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 Q. You can answer the question. 3 A. I -- colloquially, I refer to the 4 securities and cash that were ultimately delivered 5 to Barclays instead of the 7 billion dollars that 6 we thought we were supposed to have received. 7 Q. That's fair enough. Did you have any 8 discussions with JP Morgan Chase about the cash 9 that was supposed to have been delivered but 10 wasn't? 11 A. No. 12 Q. Do you have any discussions with JP 13 Morgan Chase over the weekend of September 20, I 14 believe? 15 A. No. 16 MR. DAKIS: No further questions. 17 MR. LAYDEN: I have two. 18 EXAMINATION BY 19 MR. LAYDEN: 20 Q. Mr. King, I just wanted to -- again, 21 David Layden on behalf of the examiner. 22 This morning, in response to some 23 questions from Mr. Hine, I believe that you 24 testified that the securities that Barclays 25 received from Lehman, some of those securities</p>

<p style="text-align: right;">Page 286</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 I believe you said were sold to one or more 3 trading desks at Barclays? Do I correctly 4 recall that generally? 5 A. Yes. 6 Q. I just wanted to orient you as to 7 where I am going. How were the prices determined 8 at which the securities were sold from the PMTG to 9 the trading desk? 10 A. There was very little of that done 11 because that's not straightforward. The way we 12 did it -- the way we -- and that was one of the 13 reasons for saying let's not do it. You know, in 14 general. We did it with the more liquid products 15 that had more observable prices. There were only 16 two -- there was a portfolio of Treasuries which 17 were sold to the rates trading desk. I seem to 18 remember that was about 4 billion or something 19 like that. I can't remember exactly the number. 20 And the CMOs, the agency-backed 21 mortgage -- agency mortgage-backed securities, 22 I did it in two different ways. The -- I saw 23 published -- I saw the day before price-tested 24 prices for the levels at which the Treasuries 25 were sold to the Treasuries desk. And -- so I</p>	<p style="text-align: right;">Page 287</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 saw those numbers. 3 On the agency mortgage-backed pools, 4 David Martin, who was referenced in one of the 5 earlier e-mail chains and Shujaat Islam, 6 I-S-L-A-M, he works for me, I had him sort of 7 say would we as a proprietary trading desk, do 8 we think their prices are reasonable that the 9 flow desk is going to pay. He said yes, so I 10 hit the flow trading desk -- it actually took 11 quite a few iterations to get them to a level 12 that we were comfortable to sell them to them. 13 Q. Why were those, the movement of the 14 securities from PMTG to the trading desk, 15 booked -- or why was it structured as a sale as 16 opposed to some other internal transfer within 17 Barclays? 18 A. It really was -- actually, it was 19 structured as an internal structure. We agreed to 20 price and we rewired the books to them at a net 21 P&L. There was an internal accounting P&L event 22 and the books were moved to them. 23 MR. LAYDEN: Nothing further. Thank 24 you. 25 MR. HINE: Do you have anything?</p>
<p style="text-align: right;">Page 288</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 MR. STERN: No. 3 MR. HINE: I guess we are done. 4 (Time noted: 5:52 p.m.)</p> <p style="text-align: center;">STEPHEN KING</p> <p>5 Subscribed and sworn to 6 before me this day 7 of September, 2009.</p>	<p style="text-align: right;">Page 289</p> <p>1 KING - HIGHLY-CONFIDENTIAL 2 INDEX: 3 WITNESS EXAM BY: PAGE: 4 S. King Mr. Hine 6 5 Mr. Oxford 204 6 Mr. Dakis 283 7 Mr. Layden 285</p> <p style="text-align: center;">EXHIBITS</p> <p>8 Exhibit No. Marked 9 Exhibit 388-B Document Bates stamped 34 10 BCI-EX-S 74256 through 257 11 Exhibit 389-B Document Bates stamped 105 12 BCI-EX-S 75200 through 201 13 Exhibit 390-B Document Bates stamped 141 14 BCI-EX-S 52667 through 68 with 15 attachment 16 Exhibit 391-B Document Bates stamped 181 17 BCI-EX-S 136198 18 Exhibit 392-B E-mail dated Wednesday, 225 19 September 17, 2008 at 19:14:24 20 Exhibit 393-B E-mail dated Friday, 19 235 21 September 2008 at 00:57:45 22 Exhibit 394-B E-mail dated 9/19/2008 at 239 23 9:41 p.m. with attachment</p>

	Page 290		Page 291
1	KING - HIGHLY-CONFIDENTIAL	1	KING - HIGHLY-CONFIDENTIAL
2	EXHIBITS	2	
3	Exhibit No. Marked	3	
4	Exhibit 395-B Document Bates stamped 255	4	CERTIFICATE
5	BCI-EX-S 57416 through 417	5	STATE OF NEW YORK)
6	Exhibit 396-B Document Bates stamped 260	6)ss:
7	BCI-EX-S S8711 through 114	7	COUNTY OF NEW YORK)
8	Exhibit 397-B Document Bates stamped BCI 278	8	I, MARY F. BOWMAN, a Registered
9	EX-81185	9	Professional Reporter, Certified Realtime
10		10	Reporter, and Notary Public within and for
11		11	the State of New York, do hereby certify:
12		12	That STEPHEN KING, the witness whose
13		13	deposition is hereinbefore set forth, was
14		14	duly sworn by me and that such deposition is
15		15	a true record of the testimony given by such
16		16	witness.
17		17	I further certify that I am not
18		18	related to any of the parties to this action
19		19	by blood or marriage and that I am in no way
20		20	interested in the outcome of this matter.
21		21	In witness whereof, I have hereunto
22		22	set my hand this 10th day of September,
23		23	2009.
24		24	
25		25	
	Page 292		
1	KING - HIGHLY-CONFIDENTIAL		
2	* * *ERRATA SHEET* * *		
3	NAME OF CASE: In Re: Lehman		
4	DATE OF DEPOSITION: September 10, 2009		
5	NAME OF WITNESS: STEPHEN KING		
6	Reason codes:		
7	1. To clarify the record.		
8	2. To conform to the facts.		
9	3. To correct transcription errors.		
10	Page ____ Line ____ Reason ____		
	From _____ to _____		
11	Page ____ Line ____ Reason ____		
	From _____ to _____		
12	Page ____ Line ____ Reason ____		
	From _____ to _____		
13	Page ____ Line ____ Reason ____		
	From _____ to _____		
14	Page ____ Line ____ Reason ____		
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15	Page ____ Line ____ Reason ____		
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16	Page ____ Line ____ Reason ____		
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22	Page ____ Line ____ Reason ____		
	From _____ to _____		
23	_____ STEPHEN KING		
24			
25			

BCI EXHIBIT

78

Page 1

1 HIGHLY CONFIDENTIAL - A. KIRK

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)

8 HOLDINGS, INC., et al., (Jointly Administered)

9

Debtors.

10

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11

12 * * * HIGHLY CONFIDENTIAL * * *

13 DEPOSITION OF ALEX KIRK

14 New York, New York

15 August 31, 2009

16

17

18

19

20

21

22

23 Reported by:

24 KATHY S. KLEPPER, RMR, RPR, CRR, CLR

25 JOB NO. 24545

Page :
1 HIGHLY CONFIDENTIAL - A. KIRK
2 August 31, 2009
3 9:30 a.m.
4
5 HIGHLY CONFIDENTIAL deposition
6 of ALEX KIRK, held at Jones Day, LLP,
7 222 East 41st Street, LLP, New York,
8 New York, before Kathy S. Klepfer, a
9 Registered Professional Reporter,
10 Registered Merit Reporter, Certified
11 Realtime Reporter, Certified Livenote
12 Reporter, and Notary Public of the State
13 of New York.
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16
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18
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21
22
23
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25

Page

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2
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23
24 Also Present:
25 PHILIP E. KRUSE, Alvarez & Marsal

Page 5

1 HIGHLY CONFIDENTIAL - A. KIRK
2 ALEX KIRK, called as a

3 witness, having been duly sworn by a Notary
4 Public, was examined and testified as
5 follows:

6 EXAMINATION BY

7 MR. GAFFEY:

8 Q. Mr. Kirk, good morning. My name is
9 Bob Gaffey. We met briefly before. I'm with
10 Jones Day. We are special counsel to the estate
11 of Lehman Brothers Holdings, Inc., and as I
12 guess you may know, we are spending some time
13 looking into the facts surrounding the
14 transaction in September of 2008 --

15 A. Uh-huh.

16 Q. -- through which Barclays purchased
17 some assets from Lehman.

18 Just a few ground rules. If at any
19 time you need a break, just say so. If there's
20 a question pending, I would prefer to get an
21 answer to it and then we can take break, but
22 just speak right up if you want to take five or
23 ten minutes.

24 I'm kind of a fast talker, so if I'm
25 going too fast, tell me and I'll try and slow

Page 6	Page 7
1 HIGHLY CONFIDENTIAL - A. KIRK 2 myself down. And I'm going to ask you please to 3 wait until there's a full question asked before 4 you answer so that we can, as best we can, get a 5 clear record. 6 A. Uh-huh. 7 Q. Okay? 8 Did you have discussions with anyone 9 other than your counsel, Mr. Kelley, to prepare 10 for your deposition today? 11 A. Yes. 12 Q. With whom? 13 A. I don't remember. 14 Q. Mr. Kelley or anybody from his firm? 15 Anybody outside of his firm? 16 A. Outside his firm we met with the 17 Barclays lawyers. 18 Q. Okay. 19 A. I don't remember their names. 20 Q. And by whom are you employed, sir? 21 A. Currently I'm not employed. 22 Q. Was there a time when you were 23 employed at Lehman Brothers? 24 A. Yes. 25 Q. Can you give me, sir, just a brief	1 HIGHLY CONFIDENTIAL - A. KIRK 2 description of the positions you held? 3 How long were you at Lehman? 4 A. I was at Lehman two separate stints. 5 I was at Lehman from December of 1994 until 6 January of 2008. 7 Q. Uh-huh. 8 A. And I returned to Lehman in July of 9 2008. When I went to Lehman Brothers from 10 basically July of -- or, December of 1994 till 11 December 2001, I ran the distressed debt 12 business for Lehman Brothers. From 2002 until 13 2006, I ran the high-yield and leveraged loan 14 business for Lehman Brothers. From 2006 until 15 October of 2007, I ran the global credit 16 businesses. From October 2007 until January of 17 '08, I was co-chief operating officer of fixed 18 income, and from -- and then I left the firm. 19 When I returned, I was global head of principal 20 businesses for that brief period of time. 21 Q. And why did you leave the firm in 22 January of '08? 23 A. The global head of fixed income, Roger 24 Nagioff, had resigned; my partner, Andy Morton, 25 was promoted to head of fixed income; and I
Page 8	Page 9
1 HIGHLY CONFIDENTIAL - A. KIRK 2 reached a mutual agreement to leave the firm 3 with senior -- with the president of Lehman 4 Brothers. 5 Q. And where did you work in between 6 January of '08 and July of '08 when you returned 7 to Lehman? 8 A. Didn't work. 9 Q. And what occasioned your return to 10 Lehman in July of '08? 11 A. They had promoted Bart McDade to be 12 president of the firm, and he requested that I 13 return to the firm within a few days of his 14 elevation. 15 Q. And I take it you worked at Lehman -- 16 well, for how long after July of '08 did you 17 work at Lehman Brothers? 18 A. Until the end. Until most of the 19 employees were transferred to Barclays, U.S. 20 employees. 21 Q. And at the end, did you transfer over 22 to Barclays yourself? 23 A. Yes. 24 Q. And when did you start work at 25 Barclays?	1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. I don't remember the transfer date, to 3 be honest with you. I worked there till the 4 first week of November. 5 Q. First week of November '08? 6 A. Yes. 7 Q. What positions did you hold at 8 Barclays? 9 A. I didn't have a position at Barclays. 10 Q. Was there -- I know it was sort of 11 tumultuous times. Was there any break in 12 between leaving Lehman and going to Barclays, or 13 did you just sort of start working at Barclays 14 at the end of the Lehman -- 15 A. Whenever the actual HR records 16 transferred. 17 Q. Okay. Did you have a written 18 employment agreement with Barclays? 19 A. No. 20 Q. Was any written employment agreement 21 ever offered to you by Barclays? 22 A. No. 23 Q. Would you describe to me your 24 compensation package at Lehman -- withdrawn. 25 What was your compensation arrangement

<p style="text-align: right;">Page 10</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 for Lehman when you returned in July of '08? 3 A. I would, when I returned, I would 4 receive salary. 5 Q. And what was the salary? 6 A. It was supposed to be [REDACTED] but 7 through an administrative mistake, I got paid 8 [REDACTED] 9 Q. And what was your salary at Barclays? 10 A. The same. 11 Q. Did you have any arrangements or 12 agreements for a bonus at Lehman? 13 A. No. 14 Q. Did you have any arrangements or 15 agreements for a bonus at Barclays? 16 A. Yes. 17 Q. What were those? 18 A. Let me clarify. 19 Q. Sure. 20 A. About two weeks after I arrived at 21 Lehman, I was granted, without a request -- 22 maybe two or three weeks, I don't remember the 23 exact time -- equity under a program they had 24 started that spring. They were granting equity 25 to a lot of the senior executives, and I was</p>	<p style="text-align: right;">Page 11</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 granted I think it was [REDACTED] shares of Lehman 3 equity. 4 Q. And what were your bonus arrangements 5 or agreements with Barclays? 6 A. About the end of October, I reached 7 out to Bart McDade suggesting that perhaps 8 Barclays could pay me a bonus before I left. 9 About a week later, they informed me that they 10 would pay me [REDACTED] in two separate 11 installments. 12 Q. And were those installments to be paid 13 on the first and second anniversary of your 14 Barclays tenure; was that the arrangement? 15 A. No, it was November 15th and 16 February -- sometime in February. 17 Q. Did you receive either of those 18 payments? 19 A. Yes. 20 Q. The first one, I take it? 21 A. Both. 22 Q. Both, okay. 23 Why did you leave Barclays? 24 A. I had -- because I wanted to leave the 25 sell side of the business, broadly, and move to</p>
<p style="text-align: right;">Page 12</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 the buy side of the business. 3 Q. Could you explain to me what you mean 4 by that? 5 A. Meaning I wanted to go work as a 6 principal in a hedge fund or a money management 7 firm. 8 Q. Did you do that? 9 A. I'm in the process of setting up a 10 firm right now. 11 Q. Before you went to work at Barclays, 12 before the end of Lehman, had you had any 13 discussions with anyone at Barclays about the 14 prospects of working there after the Lehman sale 15 was concluded? 16 A. I was approached by Bob Diamond to see 17 if I was interested in a job, broadly, as 18 opposed to a specific job. I told him I wasn't. 19 Q. Pardon me? 20 A. I was not. 21 Q. And when were you approached by Bob 22 Diamond? 23 A. At some point within the first week or 24 two that they were -- I would say probably that 25 week that they were negotiating to buy the firm.</p>	<p style="text-align: right;">Page 13</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 If not that week, the week after. 3 Q. Okay. We're going to spend a lot of 4 time today talking about the negotiations on 5 that point, so let me take this point to frame 6 out some dates. 7 I put before you a blank calendar 8 which may help you with days of the week that 9 we'll talk about, but when you talk about the 10 week in which there were negotiations, could you 11 tell me what week or weeks you're talking about? 12 A. The week of September -- Monday, 13 September 15th through Friday, you know, through 14 Sunday, September 21st. 15 Q. And at what point during that week did 16 Mr. Diamond talk to you about coming to work for 17 Barclays? 18 A. I don't remember if it was that week 19 or the following week. 20 Q. Again, just to give us a time point, 21 the transaction we're talking about closed on 22 September 22. Do you recall if it was before or 23 after the closing? 24 A. I don't recall. 25 Q. Was it just you and Mr. Diamond in the</p>

Page 14	Page 15
1 HIGHLY CONFIDENTIAL - A. KIRK 2 conversation? 3 A. Yes. 4 Q. And apart from this conversation with 5 Mr. Diamond, had you had discussions with anyone 6 about going to work for Barclays? 7 A. No. 8 Q. And when you had the discussion with 9 Mr. Diamond, did he talk to you about a 10 compensation package? 11 A. No. 12 Q. When did you first talk to anyone at 13 Barclays about a compensation package? 14 A. First conversation I had with anybody 15 at Barclays was the meeting I sat down with Rich 16 Ricci where he told me what the 17 severance/compensation packet bonus would be, 18 which was in late October. 19 Q. Had you had any conversations with any 20 of your fellow Lehman employees about the topic 21 of compensation at Barclays? 22 A. Bart McDade. 23 Q. Can you describe that conversation 24 with Mr. McDade? 25 A. Yes. Several of my colleagues were --	1 HIGHLY CONFIDENTIAL - A. KIRK 2 who had signed employment agreements were 3 resigning from the firm and receiving large 4 payouts upon their leaving the firm, and I 5 suggested to Bart that it would be fair if I was 6 treated in a similar way, despite not having a 7 written contract. 8 Q. And what did Mr. McDade say to you? 9 A. He said he agreed and he would talk to 10 Barclays about that. He was on point for those 11 sorts of issues with Barclays. 12 Q. Do you know if he did talk to anyone 13 at Barclays about you in that regard? 14 A. I assume he did. 15 Q. And why do you assume that? 16 A. Because they approached me with a 17 deal -- 18 Q. Was the conversation -- 19 A. -- a couple weeks later. 20 Q. I beg your pardon. 21 Was the conversation with Mr. McDade 22 during the week of the negotiations between the 23 15th and the 22nd? 24 A. No, it was sometime in late October. 25 Q. Did you have conversations with anyone
Page 16	Page 17
1 HIGHLY CONFIDENTIAL - A. KIRK 2 at Lehman during that week, the 15th through the 3 22nd? 4 A. No. 5 Q. Let me just put a full question so 6 that we have a clear record, okay? 7 A. Yeah. 8 Q. Did you have conversations with anyone 9 during the week of the 15th to the 22nd about 10 compensation that would be paid to you at 11 Barclays after the 22nd? 12 A. No. 13 Q. I think you referred a moment ago to 14 people receiving payouts when you left the firm. 15 What firm were you referring to? 16 A. Barclays. 17 Q. And who were those people you were 18 referring to? 19 A. Mike Gelband was one. I believe 20 Kaushik Amin was another. 21 Q. Anyone else? 22 A. Not that I recall directly. 23 I'm sorry. Yeung Lee was another. 24 Q. Anyone else? 25 A. That's all I can recall. There were	1 HIGHLY CONFIDENTIAL - A. KIRK 2 many people leaving Barclays at that time. 3 Q. Just as a general matter, when you say 4 there were many people leaving Barclays, are you 5 referring to former Lehman employees -- 6 A. Yes. 7 Q. -- who transferred? 8 A. Yes. 9 Q. And then left Barclays? 10 A. Yes. 11 Q. And if you know, sir, why were these 12 people who were leaving Barclays, Gelband, for 13 example, receiving payouts from Barclays on 14 their departure? 15 MR. HUME: Objection. Calls for 16 speculation. 17 A. I don't know. 18 Q. Why did you get payments in the 19 amounts that you did from Barclays having worked 20 there for such a short period of time? 21 MR. KELLEY: I'll make the same 22 objection. 23 Q. You can answer, I think. 24 A. I don't know. 25 Q. Did you talk to anybody about that?

<p style="text-align: right;">Page 18</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. No.</p> <p>3 Q. Were you surprised to receive payments 4 in that amount from Barclays, having worked 5 there for such a short period of time?</p> <p>6 A. No.</p> <p>7 Q. I may have been a bit confused about 8 the time periods, but when you said you were to 9 be paid [REDACTED] by -- actually, just remind 10 me, when did you leave Barclays?</p> <p>11 A. November, first week.</p> <p>12 Q. When we talked about the bonus to be 13 paid to you, the [REDACTED] in total, I think 14 you had told me it would be paid in November and 15 then in February?</p> <p>16 A. Yes. Uh-huh.</p> <p>17 Q. You left before the February payment 18 would have come due, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know why they paid you the 21 second piece?</p> <p>22 A. It was agreed that they would pay me.</p> <p>23 Q. When was it agreed? At the time you 24 left or at some time before that?</p> <p>25 A. When I was leaving, as long as I</p>	<p style="text-align: right;">Page 19</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 didn't compete with them or solicit their 3 employees for six months, I was paid -- I would 4 be paid those amounts of money.</p> <p>5 Q. Was the non-compete/non-solicitation 6 in a written agreement?</p> <p>7 A. Yes.</p> <p>8 Q. Did you have a written agreement 9 concerning your departure from Barclays?</p> <p>10 A. Yes.</p> <p>11 Q. That went beyond the non-compete 12 and -- withdraw. That's a terrible question. 13 When did you sign the written 14 agreement with Barclays?</p> <p>15 A. Sometime in November.</p> <p>16 Q. Do you have a copy of that agreement?</p> <p>17 A. I do.</p> <p>18 Q. Did you bring it with you?</p> <p>19 A. No.</p> <p>20 Unless you brought it.</p> <p>21 MR. ENRIGHT: No.</p> <p>22 MR. GAFFEY: Just for the record, I 23 should say I think it's probably called for 24 by the subpoena. We don't have to have a 25 colloquy about it now. I just want to make</p>
<p style="text-align: right;">Page 20</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 my record.</p> <p>3 I think it was called for by the 4 subpoena. I also think it would be called 5 for by our document request to Barclays.</p> <p>6 MR. HUME: I think it's from November, 7 a different kind of agreement. That's the 8 only reason. We'll look for it.</p> <p>9 MR. GAFFEY: If you could, and if -- 10 Can we go off the record for a minute? 11 (Discussion off the record.)</p> <p>12 BY MR. GAFFEY:</p> <p>13 Q. Now, when you met, Mr. Kirk, with 14 Mr. Hume or people from his firm, did you talk 15 about events during a time period other than the 16 time you were employed by Barclays?</p> <p>17 MR. KELLEY: Objection. Privileged.</p> <p>18 MR. GAFFEY: I think I can inquire to 19 find out -- a yes or no will tell me whether 20 or not I can press on the privilege point.</p> <p>21 Q. If you just answer yes or no.</p> <p>22 MR. KELLEY: No, I'll make the same 23 objection.</p> <p>24 Q. When did you meet with the lawyers for 25 Barclays?</p>	<p style="text-align: right;">Page 21</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Last Thursday.</p> <p>3 Q. Who was present?</p> <p>4 A. Mr. Hume and -- who was the other?</p> <p>5 MR. KELLEY: If you know.</p> <p>6 A. I don't remember that guy's name.</p> <p>7 Q. And I take it Mr. Kelley or people 8 from his firm were there as well?</p> <p>9 A. Yes.</p> <p>10 Q. Anyone else other than lawyers from 11 Mr. Kelley's firm or Mr. Hume's firm?</p> <p>12 A. No.</p> <p>13 Q. Did you review any documents? Just 14 answer that yes or no, please.</p> <p>15 A. Yes.</p> <p>16 Q. Did any of those documents have the 17 effect of refreshing your recollection about the 18 events concerning the sale of assets from Lehman 19 to Barclays?</p> <p>20 A. Some.</p> <p>21 Q. Which ones?</p> <p>22 A. I don't remember specifically.</p> <p>23 Q. Are there any that you remember 24 specifically that refreshed your recollection 25 about matters?</p>

<p style="text-align: right;">Page 22</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Not in particular.</p> <p>3 Q. In general?</p> <p>4 A. Not in -- generally, yes.</p> <p>5 Q. Did those documents cover a time</p> <p>6 period prior to -- on or prior to September 22?</p> <p>7 MR. KELLEY: I object to that.</p> <p>8 MR. GAFFEY: I'm not sure of the</p> <p>9 nature of the objection, David.</p> <p>10 Q. Can you answer it?</p> <p>11 MR. KELLEY: Privileged.</p> <p>12 MR. HUME: We would assert the same</p> <p>13 objection.</p> <p>14 MR. GAFFEY: Do you contend you have a</p> <p>15 privilege with this witness?</p> <p>16 MR. HUME: I think the objection -- I</p> <p>17 assume what you're questioning is to try to</p> <p>18 attack this privilege.</p> <p>19 MR. GAFFEY: I'm not attacking the</p> <p>20 privilege. I'm just trying to find out if</p> <p>21 you have a basis to assert it.</p> <p>22 Do you contend you have a privilege?</p> <p>23 MR. HUME: Yes, I think that your</p> <p>24 motion suggested that there were fiduciary</p> <p>25 breach claims that you were considering as</p>	<p style="text-align: right;">Page 23</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 to senior Lehman officers and as part of</p> <p>3 your investigation of potential claims</p> <p>4 against Barclays, but the same theory would</p> <p>5 give rise to claims against the officers and</p> <p>6 against Barclays. So, yes, I think we do</p> <p>7 have a common interest privilege in that we</p> <p>8 both deny those claims.</p> <p>9 MR. GAFFEY: I'll leave that, but I</p> <p>10 don't want to have a colloquy on the record.</p> <p>11 I disagree.</p> <p>12 BY MR. GAFFEY:</p> <p>13 Q. Let's talk about that week, the week</p> <p>14 in September that's brought us here. Can you</p> <p>15 tell me, sir, as a general matter, did you play</p> <p>16 any role in the negotiations of the agreement</p> <p>17 between Lehman and Barclays that led to the sale</p> <p>18 of assets to Barclays.</p> <p>19 (The witness confers with Mr. Kelley.)</p> <p>20 A. Is the week you're referring to the</p> <p>21 15th through the 21st?</p> <p>22 Q. Yes. Well, let me reframe it because</p> <p>23 you asked that question. At any point during</p> <p>24 September of 2008, were you involved in any</p> <p>25 discussions or negotiations with Barclays?</p>
<p style="text-align: right;">Page 24</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Yes.</p> <p>3 Q. When?</p> <p>4 A. I was involved in discussions that</p> <p>5 went from Friday, the 12th of September, until</p> <p>6 Sunday, the 14th, of the transaction that</p> <p>7 ultimately failed, and I was asked to</p> <p>8 participate in the discussions, facilitate the</p> <p>9 discussions starting Friday morning, the 19th.</p> <p>10 Q. So if I understand your answer</p> <p>11 correctly, you're not involved in any</p> <p>12 discussions or negotiations with Barclays in the</p> <p>13 period from the 15th through the 18th?</p> <p>14 A. That is correct.</p> <p>15 Q. Okay. Describe for me, if you would,</p> <p>16 generally the nature of what you did in</p> <p>17 connection with the negotiations from the 12th</p> <p>18 to the 14th, that is, from the Friday to the</p> <p>19 Sunday?</p> <p>20 A. Generally, I helped organize the due</p> <p>21 diligence of the assets of Lehman Brothers that</p> <p>22 I was responsible for specifically and helped</p> <p>23 coordinate with some of the other departments</p> <p>24 meetings that would take place with Barclays.</p> <p>25 In addition, I was down at the Federal</p>	<p style="text-align: right;">Page 25</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Reserve both Saturday and Sunday, so I</p> <p>3 participated in probably two different</p> <p>4 discussions with Barclays on Saturday and</p> <p>5 Sunday.</p> <p>6 Q. And what was the -- actually, if you</p> <p>7 don't mind, just so we have some term we can use</p> <p>8 and I don't have to keep saying it this way,</p> <p>9 could you give me, you referred to the assets</p> <p>10 you were responsible for specifically. What</p> <p>11 were those assets called?</p> <p>12 A. The global principal business.</p> <p>13 Q. What was the nature of the transaction</p> <p>14 that was being discussed from the Friday and the</p> <p>15 Saturday and the Sunday, the 12th through the</p> <p>16 14th?</p> <p>17 A. The nature of that transaction was</p> <p>18 Barclays was going to buy all of Lehman</p> <p>19 Brothers.</p> <p>20 Q. Do you know what the structure of that</p> <p>21 transaction was? Was it an asset purchase?</p> <p>22 Stock purchase? Did you have any sense of that?</p> <p>23 A. It was a -- I'm not an M&A expert, but</p> <p>24 I believe they were going to assume the debt and</p> <p>25 other contractual obligations of Lehman</p>

<p style="text-align: right;">Page 26</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Brothers. They were going to not assume the 3 preferred stock of Lehman Brothers and they were 4 going to pay a nominal, less than a dollar, per 5 share price for part of the equity and they were 6 going to spin off the real estate and private 7 equity positions into a new company which would 8 be capitalized with debt by a consortium of 9 lenders and have as its equity capital the 10 preferred stock of Lehman Brothers and the 11 equity.</p> <p>12 Q. And you said that that transaction 13 failed. Why did that transaction fail, do you 14 know?</p> <p>15 A. I was told by Bart McDade that the FSA 16 had turned down the application to close that 17 transaction.</p> <p>18 Q. When were you told this by Mr. McDade?</p> <p>19 A. Sunday around noon.</p> <p>20 Q. Now, did you have any role in those 21 negotiations, again I'm on the 12th through the 22 14th, other than as you described, the sense I'm 23 getting is primarily involved with due diligence 24 for the global principal business.</p> <p>25 A. Yes, we had -- I spent most of my time</p>	<p style="text-align: right;">Page 27</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 trying to coordinate due diligence with our 3 principals and the rest of the street, meaning 4 Goldman Sachs, Citigroup, First Boston, et 5 cetera, around the value of those assets which 6 they were going to make a loan to the spun-off 7 company.</p> <p>8 Q. And were Barclays personnel involved 9 in that process?</p> <p>10 A. Not in the due diligence process, no.</p> <p>11 Q. Were you in touch with Barclays 12 personnel about this due diligence process?</p> <p>13 A. There were some joint meetings that 14 were arranged between Goldman Sachs and 15 Citigroup as point for the street and Barclays 16 and Lehman Brothers together. Barclays 17 personnel were obviously in those meetings.</p> <p>18 Q. To your knowledge, at any point in 19 that period from Friday to Sunday were people 20 from Barclays given an opportunity to review 21 Lehman's books for due diligence purposes?</p> <p>22 A. Yes, I believe they continued to do 23 due diligence over the weekend.</p> <p>24 Q. And did you have any involvement in 25 that project, that process, giving access to</p>
<p style="text-align: right;">Page 28</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Lehman's books to personnel from Barclays?</p> <p>3 A. I don't recall specifically, but 4 probably. We were down at the Federal Reserve 5 in rooms across the hallway.</p> <p>6 Q. During the period from Friday, the 7 12th, through Sunday, the 14th, were you dealing 8 with any particular people at Barclays who you 9 could name?</p> <p>10 A. Archibald Cox. Bob Diamond. Rich 11 Ricci. Michael Klein, as their agent.</p> <p>12 Q. Anyone else?</p> <p>13 A. Those are the ones I recall.</p> <p>14 Q. And was there a principal -- were 15 there a group of people you would describe as 16 the principal negotiators for Lehman? Again, 17 I'm in the 12th through the 14th.</p> <p>18 A. Mark Shafir, who was head of M&A; Bart 19 McDade, who was president; and via telephone, 20 Dick Fuld.</p> <p>21 Q. Anyone else you would characterize, 22 that you would describe as Lehman's principal 23 negotiators?</p> <p>24 A. I was the advisor. I believe, 25 although I don't know for sure, I don't have any</p>	<p style="text-align: right;">Page 29</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 direct knowledge, but I have secondhand 3 knowledge that Skip McGee was involved.</p> <p>4 Q. Anyone else?</p> <p>5 A. That's all I know.</p> <p>6 Q. What's the basis of your secondhand 7 knowledge that McGee was involved?</p> <p>8 A. Mark Shafir would call Skip from the 9 Federal Reserve.</p> <p>10 Q. After that transaction failed, did 11 there come a time when you learned that 12 negotiations had begun again between Barclays 13 and Lehman?</p> <p>14 A. Late Sunday night sometime between 11 15 and 2 in the morning.</p> <p>16 Q. Would you describe that to me? How 17 did you learn it? Where were you when you 18 learned it?</p> <p>19 A. I believe I was in Bart McDade's 20 office, and he mentioned that Barclays had -- 21 they had had contact with Barclays and Barclays 22 was interested -- "they" meaning Dick himself, 23 Skip and Barclays was interested in pursuing an 24 acquisition of the U.S. businesses of Lehman Brothers.</p>

<p style="text-align: right;">Page 30</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Did he tell you anything more than 3 that? Who called who or anything that was said 4 in the conversation?</p> <p>5 A. No, nothing more than that.</p> <p>6 Q. Who else was present when you learned 7 this from Mr. McDade on Sunday night?</p> <p>8 A. I don't recall specifically, but 9 probably Mike Gelband.</p> <p>10 Q. I should tell you, and I should have 11 said this upfront, I don't want you, please, to 12 speculate during the day.</p> <p>13 A. Okay.</p> <p>14 Q. Once or twice you've answered by 15 saying "probably," and it's common usage, but if 16 you can give me your memory of things, as you 17 have been, tell me when you'd have to speculate, 18 okay --</p> <p>19 A. Okay.</p> <p>20 Q. -- so the record will be clear.</p> <p>21 So do you know if Mr. Gelband was in 22 that conversation?</p> <p>23 A. I don't recall.</p> <p>24 Q. Now, do you know if that conversation 25 took place before or after Lehman filed for</p>	<p style="text-align: right;">Page 31</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 bankruptcy protection?</p> <p>3 A. I don't remember exactly when the firm 4 filed, but that's a matter of record, so ...</p> <p>5 Q. Well, do you know, do you remember 6 when you learned, first learned the firm was 7 going to file? Withdrawn.</p> <p>8 Did you know before the firm filed 9 that it was going to do so?</p> <p>10 A. Yes.</p> <p>11 Q. When did you learn, first learn that 12 the firm was going to file?</p> <p>13 A. After the board meeting on Sunday 14 night, approximately 8 o'clock.</p> <p>15 Q. Did you attend that board meeting?</p> <p>16 A. No.</p> <p>17 Q. From whom did you learn the substance 18 of the board meeting?</p> <p>19 A. I don't recall.</p> <p>20 Q. And the conversation with Mr. McDade 21 about renewed negotiations with Barclays, did it 22 take place after the board meeting?</p> <p>23 A. Yes.</p> <p>24 Q. Did Mr. McDade ask you to do anything 25 in connection with these renewed negotiations?</p>
<p style="text-align: right;">Page 32</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. No.</p> <p>3 Q. Did anyone ask you to do anything in 4 connection with these new renewed negotiations?</p> <p>5 A. No.</p> <p>6 Q. Did there come a time when you learned 7 the negotiations --</p> <p>8 A. I'm sorry.</p> <p>9 Q. Beg your pardon. Go ahead.</p> <p>10 A. No, not that evening.</p> <p>11 Q. Not that evening, okay.</p> <p>12 Did come a time where you were asked 13 to perform some tasks or do something in 14 connection with the negotiations?</p> <p>15 A. Yes.</p> <p>16 Q. And when did that happen?</p> <p>17 A. Late Thursday night, the 18th of 18 September.</p> <p>19 Q. I'm coming there.</p> <p>20 Did there come a time when you learned 21 there was an agreement reached between Lehman 22 and Barclays concerning the sale of Lehman 23 assets to Barclays?</p> <p>24 A. Yes.</p> <p>25 Q. When did you learn that?</p>	<p style="text-align: right;">Page 33</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Sometime Tuesday.</p> <p>3 Q. From whom did you learn that?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did you learn whether that agreement 6 was reduced to a writing?</p> <p>7 A. No.</p> <p>8 Q. Have you ever seen any -- the written 9 agreement, have you ever seen a written 10 agreement between Lehman and Barclays concerning 11 the asset sale?</p> <p>12 A. No.</p> <p>13 Q. So you learn on maybe the Tuesday that 14 there's a deal between Lehman and Barclays, and 15 then -- and on late Thursday night you're asked 16 to participate in some way.</p> <p>17 How are you spending your time between 18 the Tuesday and Thursday?</p> <p>19 A. I'm spending, between really Sunday 20 night and Thursday, I was spending all my time 21 attempting to help coordinate the risk reduction 22 and risk management of the firm so it could 23 survive for a few days to get to closure.</p> <p>24 Q. Now, did those -- now I'm in the 25 period from, that you just described, from the</p>

<p style="text-align: right;">Page 34</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Sunday up until Thursday.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Are you working with any people from</p> <p>5 Barclays in connection with those activities?</p> <p>6 A. I don't recall specifically working</p> <p>7 with Barclays employees. Just Lehman employees.</p> <p>8 Q. Were you in communications with</p> <p>9 Barclays employees?</p> <p>10 A. Not directly. I would have</p> <p>11 communicated to our finance staff and they would</p> <p>12 have communicated to Barclays.</p> <p>13 Q. And who on the finance staff?</p> <p>14 A. Ian Lowitt, Paolo Tonucci.</p> <p>15 Q. Did you also deal with Martin Kelly?</p> <p>16 A. Maybe once, twice.</p> <p>17 Q. When you learned about a deal between</p> <p>18 Lehman and Barclays having been concluded, what</p> <p>19 was your understanding of the nature of the</p> <p>20 deal?</p> <p>21 A. That I was -- that it was going to be</p> <p>22 an asset purchase deal and that they were going</p> <p>23 to purchase some amount of assets and assume the</p> <p>24 employees of Lehman, some of the limited</p> <p>25 obligations of Lehman Brothers.</p>	<p style="text-align: right;">Page 35</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Did you have an understanding of the</p> <p>3 asset components that were going to be</p> <p>4 purchased?</p> <p>5 A. No.</p> <p>6 Q. Did you ever learn what asset</p> <p>7 components were going to be purchased?</p> <p>8 A. Are you specifically asking about the</p> <p>9 deal that was struck on that Tuesday?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 No, let me be more specific.</p> <p>13 Q. Sure.</p> <p>14 A. I got an e-mail that said they were</p> <p>15 going to purchase the building and a pool of</p> <p>16 other broadly defined assets.</p> <p>17 Q. Who did you get that e-mail from?</p> <p>18 A. Ajay Nagpal.</p> <p>19 Q. Could you spell that so we have it in</p> <p>20 the record, please?</p> <p>21 A. A-J-A-Y N-A-G-P-A-L.</p> <p>22 Q. What understanding did you have of the</p> <p>23 constituent parts of the pool of the defined</p> <p>24 assets apart from the building?</p> <p>25 A. None.</p>
<p style="text-align: right;">Page 36</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Did you have an understanding who the</p> <p>3 principal negotiators for Lehman of that</p> <p>4 transaction were?</p> <p>5 A. I understood it to be Mark Shafir,</p> <p>6 Skip McGee.</p> <p>7 Q. Did Mr. McDade have any role in those</p> <p>8 negotiations, to your understanding?</p> <p>9 A. I believe he did.</p> <p>10 Q. But you wouldn't describe him as one</p> <p>11 of the principal negotiators?</p> <p>12 A. He might have been.</p> <p>13 Q. Do you have a reason to think he might</p> <p>14 have been? Is it that --</p> <p>15 A. He was the president of the firm.</p> <p>16 Q. But other than his title, do you have</p> <p>17 a basis for thinking he might have been one of</p> <p>18 the principal negotiators?</p> <p>19 A. No.</p> <p>20 Q. Did you talk to Shafir about the</p> <p>21 negotiations?</p> <p>22 A. No.</p> <p>23 Q. Did you talk to McGee about the</p> <p>24 negotiations?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 37</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Did you have an understanding of the</p> <p>3 nature of the liabilities that Barclays was</p> <p>4 going to assume under the agreement?</p> <p>5 A. Not at the time.</p> <p>6 Q. Did there come a time when you did</p> <p>7 gain an understanding of the liabilities</p> <p>8 Barclays was going to assume under the</p> <p>9 agreement?</p> <p>10 A. A very cursory understanding on</p> <p>11 Friday.</p> <p>12 Q. That's on Friday, the 19th?</p> <p>13 A. Correct.</p> <p>14 Q. From whom did you get that</p> <p>15 understanding?</p> <p>16 A. Paolo Tonucci.</p> <p>17 Q. What did Mr. Tonucci tell you in that</p> <p>18 regard?</p> <p>19 A. That there were two categories. One</p> <p>20 was assumption of certain trade liabilities and</p> <p>21 the other was the assumption of compensation</p> <p>22 liabilities, and that they together totaled</p> <p>23 somewhere over \$4 billion.</p> <p>24 Q. Did you talk to anyone other than</p> <p>25 Mr. Tonucci about these assumed liabilities that</p>

<p style="text-align: right;">Page 38</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 totaled somewhere over \$4 billion? 3 A. During Friday, the amount of those 4 liabilities were referenced several times by 5 Paolo, who was attempting to accurately estimate 6 them, and by Barclays in their description of 7 the deal later in the afternoon. 8 Q. Let's go back to the earlier part of 9 the week. I swear I'm getting to Thursday and 10 Friday. 11 A. That's all right. 12 Q. Now I'm still sort of in the early 13 part of the week. 14 Were you asked to be involved in any 15 assessment of the value of the pool of 16 securities that was to be sold? 17 A. No. 18 Q. Did you ever come to understand that 19 the agreement between Lehman and Barclays 20 included a loss, an overall loss against the 21 amount at which those assets were carried on 22 Lehman's books? 23 A. No. 24 Q. Did you ever at any time have an 25 understanding that that agreement involved a</p>	<p style="text-align: right;">Page 39</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 discount of any kind given to Barclays against 3 the amount shown on Lehman's books of those 4 assets? 5 A. No. 6 Q. Apart from your counsel and counsel 7 from Mr. Hume's firm, have you spoken to anybody 8 about that topic? 9 A. No. 10 Q. When you learned about the sale of a 11 pool of assets, and again, apart from the real 12 estate on Tuesday, did you have an understanding 13 it was to be sold at book value? 14 A. I didn't have an understanding one way 15 or the other. 16 Q. So on the Monday, the Tuesday, the 17 Wednesday and during the day on Thursday, if I 18 understand what we've talked about so far 19 correctly, you're essentially involved in 20 managing risk? 21 A. Yes. 22 Q. And the purpose, apart from the 23 inherent reason for doing it -- 24 A. Keep the firm funded. 25 Q. Did you have an understanding, while</p>
<p style="text-align: right;">Page 40</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 you were doing that, of how long you needed to 3 do that? What the timetable was for things? 4 A. We knew we were -- I believe they were 5 trying to schedule a meeting with the bankruptcy 6 court on Friday evening, Friday afternoon. 7 It was really a day-to-day operation. 8 Q. And during that day-to-day operation, 9 did any of your activities involve entering into 10 or addressing repurchase agreements, repos? 11 A. Some of them. 12 Q. Could you describe that for me? What 13 was the nature of your activities in connection 14 with repos? 15 A. The firm had a number, a large number 16 of clients whose assets had been trapped under 17 repurchase agreements in the European 18 subsidiaries, so we spent some time trying to 19 figure out how we were going to help solve those 20 issues. That was a big piece of it. 21 And then we were also trying to shrink 22 the matched book because it used liquidity at 23 the firm as a way to raise liquidity, so where 24 you would finance client positions with other 25 client's money.</p>	<p style="text-align: right;">Page 41</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Financing of client positions with 3 other client's money; is that what you're 4 talking about when you talk about the matched 5 book? 6 A. Yes. 7 Q. And by shrinking the matched book, 8 you're reducing that level of activity of -- 9 A. Yes. 10 Q. -- using -- 11 A. And you're -- it would -- I was told 12 it would free up liquidity. 13 Q. And did you have any involvement, sir, 14 in connection with the Repurchase Agreement that 15 Lehman had with the Fed? 16 A. Only -- my only involvement there was 17 I was at the Fed when they told us Sunday 18 evening that they would lend us money to pay 19 back the tri-party repo lenders the following 20 morning. 21 Q. And did Lehman enter into a Repurchase 22 Agreement with the Fed for that purpose, do you 23 know? 24 A. Yes, they did. 25 Q. Were any of your activities devoted to</p>

<p style="text-align: right;">Page 42</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 the making of that Repurchase Agreement with the 3 Fed? 4 A. No. 5 Q. Did there come a time when the Fed 6 made it known it wanted to come out of that 7 Repurchase Agreement, to your knowledge? 8 A. Yes. 9 Q. Describe to me how you came to learn 10 that. 11 A. I don't recall specifically who told 12 me. 13 Q. As a general matter, tell me what you 14 remember about learning that the Fed wanted to 15 get out of the Repurchase Agreement with Lehman? 16 A. At some point on Wednesday, the Fed 17 said that they wanted to get paid back, I 18 believe it was Wednesday, and Lehman had to 19 figure out how to arrange alternative financing, 20 and there was only one party that would provide 21 that financing and that was Barclays. 22 Q. And what did you do in connection with 23 those activities, if anything? 24 A. I was not a repo expert. I didn't -- 25 I was not -- I'm not a repo expert. I did not</p>	<p style="text-align: right;">Page 43</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 participate in those. 3 Q. How did you learn about those 4 activities? From whom? 5 A. I don't recall specifically. 6 Q. Do you have any general recollection? 7 A. Probably the finance staff. 8 Q. And that would be Tonucci? 9 A. Ian Lowitt or Tonucci, one or the 10 other. 11 MR. GAFFEY: Can we take a five-minute 12 break? 13 THE WITNESS: Sure. 14 (Recess; Time Noted: 10:21 A.M.) 15 (Time Noted: 10:29 A.M.) 16 BY MR. GAFFEY: 17 Q. In a question I asked you a little 18 while ago, Mr. Kirk, you clarified by saying, 19 "You mean the agreement made on Tuesday?" Did 20 there come a point where you learned that the 21 deal had changed? 22 A. Friday. 23 Q. Okay. Here we are. Tell me about 24 Friday. 25 Actually, let me just back up. I</p>
<p style="text-align: right;">Page 44</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 think you also told me there was a conversation 3 late on Thursday night that began your Friday 4 activities? 5 A. Yes. 6 Q. Okay. Let's talk about that one 7 first. Who's the conversation with, where are 8 you, and what's the content of the conversation? 9 A. I'm at home. I get a call from Bart 10 McDade. He informs me that Mark Shafir has left 11 Lehman Brothers and that he needs some help 12 wrapping up the Barclays deal the following day. 13 Q. Had Shafir left on the Thursday? 14 A. I believe so. 15 Q. You described Shafir as one of the 16 principal negotiators. As of the Thursday, to 17 your knowledge, has he now gone? 18 A. Yes. 19 Q. Did McDade have anything to say about 20 that topic? 21 A. He said he went -- he quit and he went 22 to work at Citigroup. 23 Q. Other than telling you that Shafir had 24 quit and gone to work at Citigroup, did 25 Mr. McDade have anything to say about</p>	<p style="text-align: right;">Page 45</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Mr. Shafir's departure -- 3 A. No. 4 Q. -- on this Thursday? 5 A. No. 6 Q. Did Mr. McDade say anything about the 7 departure, Shafir's departure having any impact 8 on the deal? 9 A. He said that, given his departure, he 10 would need extra help and he asked for my help. 11 Q. What did he ask you to do? 12 A. That evening he did not specify what 13 he wanted me to do. 14 Q. Tell me what Mr. McDade said and what 15 you said in that conversation on Thursday night, 16 as best you remember. 17 A. He said that Mark Shafir has quit, 18 gone to Citigroup, I need some help wrapping 19 this up tomorrow, can you help me, I said yes. 20 Q. That's the entire conversation as you 21 remember it? 22 A. Yes. 23 Q. Did you ask him what he needed you to 24 do? 25 A. I think I asked him, Do you want me to</p>

<p style="text-align: right;">Page 46</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 come in the office tonight? He said no, he was 3 already home. I said, What time do you want me 4 to come in the morning? And he said, you'll get 5 an e-mail about an early morning meeting. 6 Q. Did you speak to anyone else that 7 Thursday night about the deal after you spoke to 8 Mr. McDade? 9 A. Not that I recall. 10 Q. So let's just get through the rest of 11 Thursday night, okay? After you have the 12 conversation with Mr. McDade, he says he needs 13 your help, there will be an early morning 14 meeting. 15 Did you do anything else with respect 16 to the transaction on the Thursday night? 17 A. I don't recall specifically or 18 generally. 19 Q. On the Thursday, sir -- I'll show you 20 a document about this in a second -- do you 21 recall reaching out to others in the firm, 22 including Kaushik Amin and Gerald Donini and 23 Eric Felder, to ask them to put together 24 information to -- that would be necessary to 25 portray a fire sale liquidation of the</p>	<p style="text-align: right;">Page 47</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 securities? 3 A. I may have done so by e-mail. 4 Q. Okay. I'll show you the e-mail, but 5 first, if you don't mind, what's your 6 independent recollection of that, if you have 7 any? 8 A. My independent recollection is that I 9 got an e-mail for a scheduled meeting the 10 following day and I got a request, I didn't 11 recall when it was specifically, to help 12 organize a valuation exercise on behalf of Barry 13 Ridings. I didn't recall whether that was 14 Thursday night or Friday morning. 15 Q. And who is Barry Ridings? 16 A. A Lazard restructuring banker hired by 17 the firm to testify in bankruptcy court. 18 Q. And who made this request of you? 19 A. I don't recall specifically who asked 20 me to do that. 21 Q. I'm showing you, Mr. Kirk, what has 22 been marked at a prior deposition as Exhibit 3 23 an e-mail from you to an address 24 4955214@archwireless.net. Is that your wireless 25 account?</p>
<p style="text-align: right;">Page 48</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. I believe we've determined that was a 3 wireless account that was used in the late '90s 4 when there were wireless pagers, if you recall 5 those devices. 6 Q. Okay. Uh-huh. 7 A. But had been inoperative but still 8 alive in the system. 9 Q. Okay. You're about to solve one of 10 the great mysteries of this case. 11 A. Yeah, we had -- 12 Q. Did you have that account? Are you 13 sending it to your home e-mail? 14 A. I don't -- no, this is auto-forwarded 15 by the computers. 16 Q. Okay. 17 A. So like they auto-forward to your 18 BlackBerry, these are things that auto-forward 19 from the -- 20 Q. You would love it right now if I said 21 I have nothing further, but that wasn't the key 22 question, so let me go to the exhibit that I 23 showed you. 24 A. We had to ask ourselves the same 25 question when we saw this.</p>	<p style="text-align: right;">Page 49</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Okay. Take a minute to look through 3 what was marked as Exhibit 3, sir. I have a 4 couple questions for you about it. 5 (Document review.) 6 A. Okay. 7 Q. In this, who is Daniel Flores, the man 8 from whom the underlying e-mail is sent? 9 A. I believe Daniel worked for Mark 10 Shapiro. It's indicated he worked in the 11 restructuring group that was run by a fellow 12 named Mark Shapiro at Lehman. 13 Q. And in the e-mail, you see that 14 Mr. Flores recounts, "Alex Kirk suggested we 15 contact each of you to help us understand on a 16 theoretical basis what would happen in a fire 17 sale liquidation of the securities that are 18 being transferred to Barclays as part of the 19 proposed transaction." 20 Did you have a conversation or 21 communication with Mr. Flores about that topic? 22 A. This indicates I must have. 23 Q. Apart from seeing it written on this 24 e-mail, do you have any recollection? 25 A. I don't recall.</p>

<p style="text-align: right;">Page 50</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Does this e-mail refresh your 3 recollection in any way of a communication with 4 Mr. Flores about that topic? 5 A. Again, I assume that I must have 6 talked to him. 7 Q. But again, sir, apart from seeing it 8 on the page in front of you, do you have a basis 9 for that assumption? 10 A. No. 11 Q. You said that that was -- well, let me 12 continue down into Mr. Flores' e-mail where he 13 talks about, "We will be leaving on your desks a 14 list of the top 100 positions in each of your 15 area's expertise." Did that exercise take 16 place, to your knowledge? 17 A. Yes, I believe it did. 18 Q. And what was the result of the 19 exercise? Was there a fire sale liquidation 20 scenario put together? 21 A. So these positions were delivered to 22 each of the recipients of this e-mail, Kaushik 23 Amin, Charlie Spero, Eric Felder, Gerry Donini, 24 were the various business heads in charge of 25 parts of fixed income or equities, and they</p>	<p style="text-align: right;">Page 51</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 would have been -- had those delivered early in 3 the morning, and then we were attempting to have 4 an 11 o'clock meeting to go over the findings of 5 their -- their assumptions and analysis about 6 the value of those positions. 7 Q. And did that meeting take place? 8 A. Yes, it did. 9 Q. Were you at it? 10 A. Yes. 11 Q. Who was at the meeting? 12 A. Mike Gelband, Kaushik Amin, Charlie 13 Spero and Gerry Donini, and Daniel Flores was 14 there as well as Gerry Reilly. 15 Q. Was James Seery there? 16 A. He might have been. I recall he was 17 there. 18 Q. You do recall he was there? 19 A. I recall he was there. 20 Q. Was a determination made about 21 liquidation value? 22 A. No. The data had been delivered in -- 23 the position data had been delivered in a way 24 that, given the short period of time, a couple 25 hours, the business heads were not able to</p>
<p style="text-align: right;">Page 52</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 determine in any comprehensive way the values. 3 So we adjourned the meeting with the -- with a 4 plan that Barry Ridings would talk to each of 5 these individuals separately closer to the end 6 of the day when they might have a better sense. 7 Q. Do you know if Mr. Ridings did that? 8 A. I don't know that. 9 Q. Did he speak to you at all? 10 A. Not about this topic. I saw him later 11 in the day in a meeting. 12 Q. Let me just back up a little bit. Did 13 Ridings know you were organizing this project? 14 A. Yes. 15 Q. Would he have known you're the contact 16 guy on it? 17 A. Yes. I probably called him and told 18 him call these people directly. 19 Q. Did you have any conversations that 20 you recall with Mr. Ridings about the need for a 21 liquidation scenario to be analyzed? 22 A. I assume he clarified the reasoning as 23 a test for the court. 24 Q. When you say you assume that, what's 25 the basis of that assumption?</p>	<p style="text-align: right;">Page 53</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. I vaguely recall having a conversation 3 with him. 4 Q. Let's go to the early morning of 5 Friday, the 19th. You spoke a moment ago about 6 getting a call from Mr. McDade. Shafir's quit. 7 He asked for your help, can you come to meet 8 with him in the morning. Did you do that? 9 A. Yes. 10 Q. And where was the meeting? 11 A. It was a -- I believe it was in my 12 office. 13 Q. In your office, sir? 14 A. Yes. 15 Q. Who was in attendance? 16 A. Ian Lowitt, Chris O'Meara, Gerry 17 Reilly, Paolo Tonucci. I think that was it. 18 Q. Was Mr. McDade there? 19 A. I don't believe, no, I don't believe 20 he was there. 21 Q. Now, in your conversation with 22 Mr. McDade the night before, he had told you 23 Shafir quit, he told you he needed your help, 24 you offered to come in, he said come in in the 25 morning, if I remember your testimony right, and</p>

<p style="text-align: right;">Page 54</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 that's not what governs, that's basically the 3 topics you covered with McDade on Thursday 4 night. 5 So here you are in a meeting with 6 Lowitt, O'Meara, Reilly and Tonucci. Do you 7 learn more at the meeting about the nature of 8 the help that you're going to have to give? 9 A. They broadly outlined the first 10 transaction. That was a quick summary. Then we 11 discussed an issue that had come up earlier that 12 morning around JPMorgan as our clearing bank 13 shutting down Lehman's DTC account and what 14 effect that would have on the transaction as 15 planned. 16 Q. Now, you referred to -- you said they 17 broadly outlined the first transaction. By the 18 Friday morning, is it your understanding there's 19 a second transaction, a subsequent transaction? 20 A. By the time we had this meeting -- 21 Q. Uh-huh. 22 A. -- it was my view, my opinion, that 23 there would have to be a reworking of the 24 transaction because a vast majority of those 25 securities that had been planned for transfer</p>	<p style="text-align: right;">Page 55</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 were held at JPMorgan. There was a -- and 3 JPMorgan had a dispute of some sort about the 4 transfer of the repo with Barclays, which was 5 described to me by Mike Keegan, and in addition 6 to that, they shut down Lehman's -- they closed 7 down Lehman's DTC account, which led me to 8 believe that JPMorgan would not cooperate and 9 transfer the aforementioned securities to 10 Barclays on that Friday. 11 Q. When had you spoken to Mike Keegan? 12 A. I got up and I went to the office 13 about 5 A.M. and I ran into him about 5:30 in 14 the morning. 15 Q. Had you met Mr. Keegan before? 16 A. I had met him the week before during 17 the due diligence process. 18 Q. So you say "they," that's some 19 combination of Lowitt, O'Meara, Reilly and 20 Tonucci, broadly outlined the first transaction 21 to give you a quick summary? 22 A. Yes. 23 Q. How did they summarize -- tell me what 24 you remember about their broad outline of the 25 first transaction, the quick summary that they</p>
<p style="text-align: right;">Page 56</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 gave you. 3 A. They summarized it as a purchase of 4 the building, purchase of assets, and an 5 assumption of this 4 billion, 4 and a quarter 6 billion dollars in liabilities. 7 That discussion ended very quickly 8 because of my belief that that transaction, 9 given what had just transpired -- what I had 10 learned from Keegan and the action that JPMorgan 11 had taken, that I believe that they would act as 12 a hostile party towards the closing of this 13 transaction and that whatever had taken place 14 before was irrelevant. 15 Q. Did Mr. Tonucci tell you anything 16 other than there was an assumption of 17 liabilities in an approximate amount of 4 and a 18 quarter billion for compensation of payables? 19 A. No. 20 Q. Did you have any knowledge as to how 21 that number came to be determined? 22 A. No. I was not concerned with that 23 part of the transaction. 24 Q. I'm sort of away from the Friday 25 meeting for a moment.</p>	<p style="text-align: right;">Page 57</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. No. 3 Q. At any point did you come to an 4 understanding as to how those, those components 5 of assumed liabilities came to be calculated? 6 A. No. No. 7 Q. When the transaction, the first 8 transaction was outlined to you by Tonucci, 9 O'Meara, Reilly and Lowitt, or some combination, 10 did you have an understanding as to where the 11 assets would come from to fund those assumed 12 liabilities? 13 A. I believe there was a schedule, 14 one-page schedule, which I think you have, that 15 broadly gave an asset and liability balance 16 sheet. 17 Q. Have you ever seen that schedule? 18 A. Yes. 19 Q. When did you first see that schedule? 20 A. I believe it was that morning. It was 21 that morning. 22 Q. Apart from the schedule, did you look 23 at any other documents that morning? 24 A. No. 25 Q. I'm putting before you what previously</p>

<p style="text-align: center;">Page 58</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 has been marked as Deposition Exhibit 19. 3 A. Yes, that's the schedule. 4 Q. And the schedule that you saw that 5 morning was the one with the annotation in the 6 upper right-hand corner "9/16/08, Final SB"? 7 A. Uh-huh. 8 Q. Do you remember that? 9 A. Yes. 10 Q. Okay. Who gave you the schedule? 11 A. One of the gentleman. 12 Q. Do you recall which one? 13 A. No. 14 Q. Did anybody tell you anything about 15 the schedule? 16 A. They briefly described it as an asset 17 sale that was approximately this size of this 18 characteristics of the category of assets that 19 they were going to buy, category of liabilities 20 that they were going to assume, including 21 financing liabilities and the aforementioned 22 cure payment and comp. 23 Q. When you refer to the financing 24 liabilities, are you just sort of broadly 25 describing the liabilities opposite the</p>	<p style="text-align: center;">Page 59</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 particular assets in ST borrowings, government 3 and agencies? 4 A. Yes. 5 Q. The ones that add up to 33.9? 6 A. Well, in addition, there's the 34.5 7 below that. 8 Q. For collateralized short-term funding, 9 right? 10 A. Yes. 11 Q. Now, did you have an understanding 12 when you were shown this schedule of where the 13 values for assets -- from where the values for 14 assets were derived? 15 A. I don't recall. We quickly moved on 16 from this. 17 Q. Did whoever described the schedule to 18 you, did they give you any description of the 19 role that any of that schedule played in the 20 first transaction? 21 A. They described it as the template for 22 the first transaction. 23 Q. And do you know who put together the 24 schedule that was the template for the first 25 transaction? Did they tell you that?</p>
<p style="text-align: center;">Page 60</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. No. 3 Q. Did you ask? 4 A. No. 5 Q. Now, present at the meeting was 6 Lowitt, O'Meara, Reilly and Tonucci. Was 7 anybody participating by telephone? 8 A. I don't recall. 9 Q. Was there any participation in that 10 Friday morning meeting by anybody from Barclays? 11 A. No. 12 Q. So they broadly outlined the first 13 transaction. They tell you the problem with 14 JPM, one of them or some combination of them. 15 What happens next in that meeting? 16 A. We break up. I tell them that I'm 17 going to go try to shepherd the valuation 18 process that I have been asked to follow up on 19 for this 11 o'clock meeting and that I'm going 20 to try to arrange a meeting with the senior 21 executives at Barclays to explain to them what 22 my view was, that this transaction as outlined 23 couldn't be closed on that Friday night, which 24 they agreed with. 25 Oh, I tell them I'm first going to go</p>	<p style="text-align: center;">Page 61</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 inform senior Lehman executives, Bart and Dick, 3 of this problem. 4 (Mr. Kelley confers with the witness.) 5 A. I'm sorry, just to clarify, my 6 assumption about this being problem -- this 7 transaction being problematic was agreed to. 8 The basis for that worry was verified by or 9 agreed to by Ian Lowitt and Paolo Tonucci in 10 that meeting. 11 Q. As I understand it, your primary 12 activities for the week until this Friday 13 morning meeting had been in risk management -- 14 A. Uh-huh. 15 Q. -- had been in shrinking the matched 16 book, keeping the firm alive so that the Friday 17 hearing had some possibility of succeeding, is 18 that a fair summary? 19 A. Yes. 20 Q. And you're called into this meeting on 21 Friday morning and told that the transaction 22 that's been on the table all week can't go 23 forward because of this problem. This may seem 24 an odd question, sir, but why are you now the 25 guy that has to call Barclays and call senior</p>

<p style="text-align: right;">Page 62</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 management? Did you have an understanding of 3 why you're the lucky winner of that 4 responsibility? 5 A. Because I volunteered. Yeah, I -- 6 Q. Did you have -- 7 A. Believe me, I almost had a heart 8 attack just thinking about that. 9 (Mr. Kelley confers with the witness.) 10 A. That's true. In addition to Mark 11 Shafir had left the firm, so ... 12 Q. That's sort of implicit in my 13 question. Why are you the guy who has to step 14 up to the plate when Shafir leaves? Why not 15 McGee? Why not Tonucci? Why not Lowitt? 16 A. Because Bart trusted me. 17 Q. So did you go and inform more senior 18 Lehman executives of the issues of the problem? 19 A. Yes. 20 Q. Okay. Tell me about that. Who did 21 you contact and what did you tell them, what did 22 they say to you? 23 A. I contacted Bart, I don't recall who 24 else was in the meeting exactly, but I walked 25 in, and there were others, I don't remember who</p>	<p style="text-align: right;">Page 63</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 exactly, Fuld, most likely, that the assets and 3 liabilities that had been assumed to be 4 transferred in the first transaction were all 5 held in custody or had to be cleared through 6 JPMorgan, and because JPMorgan had taken this 7 hostile action, there was a dispute, which I 8 didn't understand the exact nature of, with the 9 transfer of collateral between Barclays and -- 10 between the Fed through JPMorgan to Barclays. 11 I knew at a very high level there was 12 a dispute between the two firms as to what 13 collateral was accept -- what collateral was 14 transferred and what collateral was left at 15 JPMorgan, and I knew that JPMorgan had shut down 16 Lehman's DTC account and failed all the 17 settlements on that Friday, and a combination of 18 those two pieces of information led me to 19 believe that JPMorgan wouldn't transfer these 20 assets on this schedule and liabilities, both 21 sides, in any normal course. 22 Q. And when you reported this to McDade, 23 you said -- withdrawn. You said Fuld was there, 24 most likely. 25 Do you have a recollection of him</p>
<p style="text-align: right;">Page 64</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 being there, or are you assuming again, because 3 of his role, his title, that he might have been? 4 A. Yes, I'm assuming because of his title 5 he might have been. 6 Q. But you do recall talking to McDade 7 about it? 8 A. Yes. 9 Q. Do you recall anyone else other than 10 McDade to whom you spoke? 11 A. No. 12 Q. And what did Mr. McDade say? 13 A. He said we should have a sit-down with 14 the Barclays senior team and we should explain 15 our point of view on this ASAP. 16 Q. And what happened next? 17 A. We had a meeting with Bart, myself, 18 and then it was Michael Klein, Rich Ricci, and 19 Mike Keegan from Barclays. 20 Q. Where was the meeting? 21 A. It was in an office on 31 that 22 Barclays was using as temporary space. 23 Q. And who's there from the Lehman side 24 of the table? 25 A. Bart and I were there.</p>	<p style="text-align: right;">Page 65</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Anyone else? 3 A. Ian was there as well, I'm pretty 4 sure. 5 Q. Was Tonucci there? 6 A. I don't remember. 7 Q. Do you recall whether or not with 8 regard to which ones there were, do you recall a 9 bigger meeting than that, or is this the 10 assembly of people that you remember? 11 A. It was an assembly of no more than ten 12 people total. 13 MR. GAFFEY: Can we go off the record 14 for a minute? 15 (Discussion off the record.) 16 (Recess; Time Noted: 10:59 A.M.) 17 (Time Noted: 11:09 A.M.) 18 BY MR. GAFFEY: 19 Q. We were, before the break, we were at 20 this Friday morning meeting, and so I want to go 21 through in as much detail as I can what happened 22 at that meeting and who said what. 23 I have a general sense that the JPM 24 problem has arisen. Did you have a sense, was 25 there any discussion about the JPM problem being</p>

<p style="text-align: right;">Page 66</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 related in any way to the Repurchase Agreement 3 with Barclays? 4 A. Yes. 5 Q. Describe that for me. What was your 6 understanding? 7 A. So, to be clear, I'm not an expert, 8 was not an expert on repo, so I was learning 9 things for the first time that day that I didn't 10 understand how they actually worked prior to 11 that. So I got what was a cursory as opposed to 12 a detailed explanation of the issue, but as I 13 understood it from the way that Mike Keegan 14 explained it to me was that the Fed had been 15 providing a repo for Lehman Brothers earlier in 16 the week of approximately \$50 billion, that the 17 Fed had made it known that they wanted to be 18 repaid on that repo, and that Barclays had 19 agreed to assume that repo obligation from the 20 Fed. Without that financing the firm would have 21 collapsed the next morning. 22 So the way it was explained to me was, 23 during the transfer of those -- that loan and 24 the collateral associated with that loan, there 25 were many pieces of collateral that Barclays</p>	<p style="text-align: right;">Page 67</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 could not value, so they did not accept them in 3 transfer from the Fed. And mechanically, it was 4 explained to me the way that worked was, in a 5 tri-party repo, the Fed transferred all of the 6 positions to JPMorgan and then JPMorgan began 7 transferring those positions upon the receipt of 8 money from Barclays transferred money, and then 9 they would transfer the positions that secured 10 that repo. 11 And at some point during that process, 12 Barclays became very uncertain as to some 13 percentage of that collateral, I don't recall 14 the exact amount, but it was a large number, 15 maybe as much as, you know, 20 percent of the 16 collateral, and when Barclays didn't accept 17 those positions, they, by definition, just got 18 left at JPMorgan. 19 They -- so JPMorgan was left with 20 collateral that they were not comfortable with 21 but Barclays would not accept, so -- and 22 JPMorgan, I guess they attempted to negotiate 23 but couldn't get that negotiation done. 24 Q. Who was the "they" who attempted to 25 negotiate?</p>
<p style="text-align: right;">Page 68</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. That JPMorgan and Barclays attempted 3 to negotiate, but they couldn't complete a 4 negotiation for a transfer of that collateral. 5 Q. And when you say Keegan's explanation, 6 I take it you're talking about the conversation 7 you had with Keegan before the meeting? 8 A. Yes. 9 Q. Okay. 10 A. The 5:30 in the morning. 11 Q. And did Keegan give you any level of 12 detail about why Barclays was uncertain about 13 some percentage of that collateral? 14 A. It was collateral that they didn't -- 15 was either they didn't have the expertise to 16 value or was not transparent, meaning that there 17 were financing vehicles that Lehman set up that 18 went into the repo that you couldn't look 19 through to what was in those financing vehicles. 20 Q. And did Mr. Keegan give you any 21 information about what that collateral was, what 22 type of securities? 23 A. He didn't know. 24 Q. Well -- 25 A. In some cases he didn't know. In</p>	<p style="text-align: right;">Page 69</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 other cases it was, yes, it was illiquid and 3 either high-yield or defaulted or consumer 4 mortgage securities that were the ones he could 5 identify that were very hard to value. 6 Q. I'm hearing this in two categories, 7 and I want to be sure you and I are on the same 8 page. There's a component of this collateral 9 that's hard to value and there's a component 10 that is not transparent, which may also make it 11 hard to value -- 12 A. Yes. 13 Q. -- but some of it's transparent and 14 hard to value? 15 A. Yes. 16 Q. Okay. Did he identify any particular 17 categories of hard-to-value securities? I get 18 it, high-yield or mortgage-backed, but did he -- 19 A. Distressed. 20 Q. Did he use the term "racers" at all? 21 A. That was the non-transparent category. 22 Q. Okay. Tell me what Mr. Keegan said to 23 you about racers. 24 A. "What are they?" 25 Q. Anything else?</p>

<p style="text-align: right;">Page 70</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. "And what's in them?" I said, "I 3 don't know." I then went and -- Paolo Tonucci, 4 I directed him to Paolo, who would be able to 5 tell him what was in those various financing 6 vehicles.</p> <p>7 Q. Do you know what Paolo Tonucci then 8 spoke to Mr. Keegan about?</p> <p>9 A. I don't know.</p> <p>10 Q. Did Mr. Keegan say anything else about 11 racers other than he didn't know what they were?</p> <p>12 A. He asked how would I find out.</p> <p>13 Q. Did Mr. Keegan say anything to you 14 that, in sum or substance, compared the assets 15 that Barclays had agreed to buy in the first 16 transaction, to use your term, and the assets 17 that were in the repo that were the subject of 18 this transfer problem?</p> <p>19 A. He summarized it as it was a very 20 different and riskier category of assets.</p> <p>21 Q. Was anyone else present when 22 Mr. Keegan and you had this early morning 23 conversation?</p> <p>24 A. No.</p> <p>25 Q. Did you understand from Mr. Keegan, in</p>	<p style="text-align: right;">Page 71</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 sum or substance, whether he had spoken to 3 others at Lehman about this problem by the time 4 he had spoke to you?</p> <p>5 A. I understood I was the first person he 6 had explained it to, at Lehman that he had 7 explained it to.</p> <p>8 Q. When you spoke to him and about this 9 topic, did you let him know that there was a 10 Friday meeting planned with -- that you had been 11 asked to come to an early morning meeting by 12 Mr. McDade?</p> <p>13 A. Yes.</p> <p>14 Q. And did you tell him you'd get back to 15 him after that meeting to see if there was a 16 solution to this problem?</p> <p>17 A. Yes.</p> <p>18 Q. So, in the course of that meeting, now 19 we've got the JPM issue, it's been identified, 20 you've had the first transaction outlined to you 21 broadly, the JPM problem --</p> <p>22 A. Right.</p> <p>23 Q. -- has been also described. What 24 happens next?</p> <p>25 A. I'm sorry, so where -- what time of</p>
<p style="text-align: right;">Page 72</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 day are we now?</p> <p>3 Q. I'm sorry. I've got you back at the 4 Friday meeting with -- we're back at the Friday 5 meeting with Bart, yourself, Klein --</p> <p>6 A. Okay.</p> <p>7 Q. -- Ricci and Keegan.</p> <p>8 A. Yeah.</p> <p>9 Q. Okay.</p> <p>10 A. So at that meeting I walk through -- I 11 summarized the issues, as I understand them, for 12 this dispute with Barclays. I inform Barclays 13 that those executives -- that JPMorgan had shut 14 down Lehman's DTC account, and I made the 15 supposition that that would make it impossible 16 to complete the transaction as contemplated.</p> <p>17 Q. And what, if anything, did Mr. McDade 18 have to say about those topics?</p> <p>19 A. He said he agreed with me.</p> <p>20 Q. Did you speak first in outlining the 21 issues?</p> <p>22 A. Yes.</p> <p>23 Q. And how did Klein, Ricci and Keegan or 24 any combination of those three men react to that 25 news?</p>	<p style="text-align: right;">Page 73</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. There was some question as to, well, 3 what do we do now? I suggested that the only 4 reasonable course of action would be to proceed 5 with the transaction substituting the repo 6 assets, the assets that Barclays had lent 7 against, for all the other securities that had 8 been contemplated in the transaction and leave 9 the rest of the transaction as was.</p> <p>10 Q. So if I understand this -- I want to 11 make sure I understand this correctly. Your 12 suggestion was to take the assets that were the 13 subject of the first transaction roughly 14 outlined in that schedule?</p> <p>15 A. Yeah.</p> <p>16 Q. And instead of transferring that body 17 of assets, transfer the body of assets that are 18 in the repo, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Maybe I'm not understanding. Is the 21 problem here, doesn't it involve the assets that 22 are in the repo? Hasn't Mr. Keegan told you 23 that Barclays is uncertain about some components 24 of the repo collateral?</p> <p>25 A. So, again, the issue was that it was</p>

<p style="text-align: right;">Page 74</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 my view that JPMorgan would not transfer one 3 dollar of one asset unless they got whatever 4 they wanted in a negotiation from Barclays or 5 anybody else, and even then they wouldn't -- it 6 didn't appear that they would do anything but be 7 hostile, having shut down our DTC account, which 8 is a, I mean, that's a colossal nightmare. You 9 know, you've got tens of billions of dollars of 10 securities supposed to settle a regular way that 11 you've been transacting with your clients, and 12 every single one of them fails -- both sides, 13 buys and sells.</p> <p>14 Q. How is JPM in a position to shut down 15 Lehman's?</p> <p>16 A. They're our clearing bank. 17 So it was, again, my supposition, 18 which was confirmed by, you know, the senior 19 finance staff and Bart and then finally the 20 Barclays guys, that, you know, JPMorgan should 21 be viewed as not going to cooperate. And 22 Barclays was attempting to reach JPMorgan and 23 never got a return call, was my understanding. 24 I was told that by probably Gerard LaRocca or 25 Keegan, one of them, and hence, you know, the</p>	<p style="text-align: right;">Page 75</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 only assets that could participate in any way in 3 this transfer were ones that Barclays had held 4 in custody at their clearing bank, Bank of New 5 York, and potentially any assets at Lehman that 6 were unencumbered and were held away from 7 JPMorgan.</p> <p>8 Q. So, again, forgive me if I'm thick 9 here, but is the problem with JPMorgan -- 10 withdrawn.</p> <p>11 When you talk about the assets that 12 Barclays had at Bank of New York, those were 13 assets within the repo?</p> <p>14 A. Yes.</p> <p>15 Q. Within the Barclays repo, yes?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know the amount, the value of 18 the assets that were at Bank of New York within 19 the Barclays repo?</p> <p>20 A. I didn't know that. I didn't know the 21 amount or the value of those assets.</p> <p>22 Q. Okay. And again, so we're clear, you 23 didn't know at the time or you don't remember 24 now, or both?</p> <p>25 A. I didn't know at the time.</p>
<p style="text-align: right;">Page 76</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Okay. And the problem with JPM 3 refusing to transfer assets over, is that away 4 from the repo?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So your suggestion is to focus 7 on the repo as the body of assets that can be 8 transferred to Barclays?</p> <p>9 A. Right.</p> <p>10 Q. Plus unencumbered, other unencumbered 11 assets?</p> <p>12 A. That were not held or cleared through 13 JPMorgan.</p> <p>14 Q. That are away from JPMorgan?</p> <p>15 A. Correct.</p> <p>16 Q. Now, did you have an idea then of what 17 the value of that total package could be?</p> <p>18 A. No.</p> <p>19 Q. So you've made --</p> <p>20 A. Because I wasn't clear on what 21 actually got transferred and what didn't get 22 transferred. I knew broadly the size of the Fed 23 repo. I didn't know what the disputed amount 24 was or the assets.</p> <p>25 Q. I just need to follow up a bit on the</p>	<p style="text-align: right;">Page 77</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 disputed amount.</p> <p>3 A. Yeah.</p> <p>4 Q. I'm trying to be as clear as I can --</p> <p>5 A. Yeah.</p> <p>6 Q. -- as to what's the JPM problem and 7 how much of that is --</p> <p>8 A. Right.</p> <p>9 Q. -- whether that's -- we've established 10 the JPM problem is away from the repo, right?</p> <p>11 A. The JPM problem vis-a-vis Lehman 12 Brothers was away from the repo, that is 13 correct.</p> <p>14 Q. But vis-a-vis Barclays, it was not 15 away from the repo?</p> <p>16 A. My understanding was there was a 17 dispute about Barclays not accepting all the 18 collateral out of the Fed, only some of it, and 19 that collateral they didn't accept got left 20 behind or, by definition, stays at the clearing 21 bank, which was JPMorgan. JPMorgan clears for 22 the Fed.</p> <p>23 Q. And I think you had an -- a rough idea 24 of what percentage of that. It was some 25 percentage. It could have been as much as 20</p>

<p style="text-align: right;">Page 78</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 percent that Barclays would not accept, yes? 3 A. Yes. 4 Q. Did you have a sense of a dollar 5 amount of what was net of the amount that 6 Barclays would not accept? 7 A. It was somewhere in the 40s. 8 Q. And when you're talking about the 9 amount of the repo, are you talking about the 10 amount that was financed or the total collateral 11 as pledged? Withdrawn. 12 You told me you're not an expert in 13 repos -- 14 A. Yeah. 15 Q. -- and neither am I, but I understand 16 there's a haircut. 17 A. Yeah, I think I was talking about the 18 amount financed, but I'm not -- I'm sketchy on 19 that. 20 Q. So you make this proposal. McDade 21 says he thinks you're right. What's the 22 reaction from Klein, Ricci and Keegan? 23 A. Ricci says -- there was some 24 discussion, I don't recall the specifics of it, 25 but Ricci then I recall specifically says, I</p>	<p style="text-align: right;">Page 79</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 believe he's right. We have to change course. 3 Q. I know it's a long time ago, but just 4 given that phrase, is that -- are you quoting 5 him? Are you summarizing him? 6 A. I'm summarizing him. I was under a 7 tremendous amount of pressure and stress, so my 8 memory is a little fuzzy from that. 9 Q. Sure. 10 A. At one point in this meeting, Mike 11 Klein looked at me and said, "Do you need a 12 doctor?" 13 Q. Really? 14 A. Yeah. 15 Q. Well, you're kind of a last-minute 16 volunteer in this thing, you know? 17 A. Yeah. Story of my life. 18 Q. What did Klein say? 19 A. He said, okay, let's get to it. 20 Q. And did Keegan say anything? 21 A. He said, well, we haven't analyzed 22 this collateral so we don't know what it's 23 worth. How are we going to figure out what it's 24 worth? And we said we had started a process 25 with these large positions.</p>
<p style="text-align: right;">Page 80</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 The problem turned out to be not only 3 was the data delivered in a not usable fashion 4 to the heads of the desk, but it was a different 5 set of securities. So we had to -- it was 6 determined that the finance staff of Lehman 7 Brothers needed to work with the finance staff 8 at Barclays and get a list of everything that 9 was in their repo line, and then take that off 10 the systems and try to put it together in a way 11 that could be delivered to the various trading 12 desks to try to put some value on it. 13 Q. When you referred before to, you know, 14 we had started that process, was that a -- were 15 you referring -- 16 A. From the night of the -- 17 Q. Yes. 18 A. -- Daniel Flores' e-mail. 19 Q. That's the one that refers to trying 20 to come up with fire-sale-type prices? 21 A. Yes. 22 Q. What in your mind was the connection 23 between the, what I'll call the fire sale 24 analysis and the problem you were dealing with 25 on Friday? I'm not sure I'm clear on that.</p>	<p style="text-align: right;">Page 81</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. Only that we had -- that I could tell 3 the Barclays guys that we were already trying to 4 value some collateral and relative to the marks. 5 The -- Lehman suffered, you know, two issues 6 that week around valuations. One was the 7 markets were unbelievably volatile and 8 incredibly illiquid, and that we were a less 9 than desirable counterparty for our -- so that 10 we had been, when we had been liquidating 11 collateral, we had been losing a lot of money, 12 and in addition to that, a smaller problem was, 13 you know, since the firm had filed for 14 bankruptcy, not every person was showing up to 15 work. 16 Q. Now, the fire sale liquidation 17 analysis, the top 100 positions there, did 18 you -- are you saying that some of those might 19 have been in the repo? 20 A. Yeah, but we didn't know which ones. 21 Q. You didn't know? 22 A. We had no idea. 23 Q. That's not, so we're clear, the 100 24 positions we're talking about there is not with 25 direct reference to what was in the repo?</p>

<p style="text-align: right;">Page 82</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. No, not at all. We didn't know we had</p> <p>3 this problem Thursday night.</p> <p>4 Q. What's the tone of the Friday meeting?</p> <p>5 I know it's tense and Klein says do you need a</p> <p>6 doctor, but are people angry? Are they calm?</p> <p>7 Are they -- what's the temperature in this</p> <p>8 meeting?</p> <p>9 A. Anxious. It's very, very anxious.</p> <p>10 How are we going to be able to try to get</p> <p>11 anything over the goal line by 4 o'clock this</p> <p>12 afternoon, and if we don't, you we don't believe</p> <p>13 we can survive the weekend.</p> <p>14 Q. And why 4 o'clock that afternoon? Was</p> <p>15 that the bankruptcy hearing?</p> <p>16 A. Yeah, that was the bankruptcy hearing,</p> <p>17 the scheduled bankruptcy hearing.</p> <p>18 Q. Is there any discussion in this</p> <p>19 meeting about what, if anything, needs to be</p> <p>20 said to the bankruptcy court about this event,</p> <p>21 these events?</p> <p>22 A. That it would have to be explained.</p> <p>23 This transaction was very different than what</p> <p>24 had been previewed two days before, and it would</p> <p>25 have to be explained why it came up.</p>	<p style="text-align: right;">Page 83</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Who said it would have to be</p> <p>3 explained?</p> <p>4 A. Barry -- in that meeting -- I</p> <p>5 apologize, some of these meetings are blurs.</p> <p>6 Q. Sure.</p> <p>7 A. But at some point during the day,</p> <p>8 Barry Ridings, I was in a meeting with him, I</p> <p>9 believe it was maybe at the tail-end of this</p> <p>10 meeting, he came in and, you know, he listened</p> <p>11 to this explanation again and then he said,</p> <p>12 okay, we're going to have to be able to explain</p> <p>13 this.</p> <p>14 Q. And did the Barclays folks in the</p> <p>15 meeting -- and by that, I'm including Klein</p> <p>16 here, Klein, Ricci, Keegan -- did they have</p> <p>17 anything to say about whether and when this</p> <p>18 would have to be explained to the court?</p> <p>19 A. No, they were taking Barry's lead.</p> <p>20 Q. Now --</p> <p>21 A. We all knew that there was a court</p> <p>22 hearing scheduled at 4 o'clock.</p> <p>23 Q. Why do you describe this as a very</p> <p>24 different agreement?</p> <p>25 A. The list of assets is different.</p>
<p style="text-align: right;">Page 84</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Was there any discussion about the</p> <p>3 consideration Barclays was to give in the</p> <p>4 agreement also changing?</p> <p>5 A. Besides the amount, no.</p> <p>6 Q. Well --</p> <p>7 A. Meaning besides the fact that it</p> <p>8 wasn't 72 million, you know, the attempt was to</p> <p>9 get it so that the assets and liabilities would</p> <p>10 balance.</p> <p>11 Q. And the 72 million, you're looking at</p> <p>12 Exhibit 19, yeah?</p> <p>13 A. Yes.</p> <p>14 Q. That financial schedule.</p> <p>15 Was there any discussion of the</p> <p>16 compensation and cure components of the assumed</p> <p>17 liabilities changing?</p> <p>18 A. Not at that meeting.</p> <p>19 Q. Did you at some point hear a</p> <p>20 discussion about the compensation and cure</p> <p>21 components changing?</p> <p>22 A. At some point late in the day, there</p> <p>23 was a -- not on the compensation, there was no</p> <p>24 discussion of compensation. Ian -- not Ian,</p> <p>25 Paolo was attempting to figure out a better</p>	<p style="text-align: right;">Page 85</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 estimate. I think they had always continually</p> <p>3 worked on it, but they were trying to figure a</p> <p>4 better estimate.</p> <p>5 Ian -- I remember Paolo coming into a</p> <p>6 meeting I was in, I don't remember who it was</p> <p>7 with, but he came in and said I'm working</p> <p>8 through the cure payments to try to see if</p> <p>9 there's some wiggle room there, so to speak, in</p> <p>10 terms of what is that estimate. I never got</p> <p>11 a -- I was -- that was not part of the</p> <p>12 transaction I was concerning myself with. I was</p> <p>13 supposed to try to shepherd along as best as</p> <p>14 possible in this incredible short timeframe some</p> <p>15 valuation work that we could get to on the</p> <p>16 assets.</p> <p>17 Q. Wiggle room up or wiggle room down, or</p> <p>18 both?</p> <p>19 A. I don't -- he didn't mention it one</p> <p>20 way or another. Some variance I guess is a</p> <p>21 better way to put it. I don't remember whether</p> <p>22 it was higher or lower.</p> <p>23 Q. In the Friday meeting with McDade and</p> <p>24 you and Klein and Ricci and Keegan, was there</p> <p>25 any discussion about Lehman defaulting on the</p>

<p style="text-align: right;">Page 86</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 repo? 3 A. No. 4 Q. Were you ever involved in any 5 discussion concerning the topic of Lehman 6 defaulting on the repo? 7 A. Not a discussion. I received an 8 e-mail that referenced it, but -- 9 Q. From whom did you receive the e-mail? 10 A. I don't have it in front of me. 11 You've got it, Gerry Reilly. That was 12 a couple days earlier when I wasn't involved, so 13 I didn't pay attention to it. 14 Q. Do you recall that as an e-mail where 15 Reilly proposed defaulting on the repo was the 16 best way to deliver the bulk discount to 17 Barclays? 18 A. I would have to look at it again. 19 Q. We'll get to that a little later. 20 A. Fine. 21 Q. Is there any discussion in the Friday 22 meeting of that, of using the repo as a means of 23 delivering a haircut to Barclays? 24 A. No. 25 Q. Was there any discussion in the Friday</p>	<p style="text-align: right;">Page 87</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 meeting of terminating the repo? 3 A. I recall a discussion, I don't 4 remember who was in the meeting, but with 5 Barclays that if we couldn't get to closure that 6 day -- 7 Q. That Friday? 8 A. That Friday. 9 Q. Okay. 10 A. -- it was likely they would terminate 11 the repo. 12 Q. Do you know if at any point Barclays 13 did terminate the repo? 14 A. I don't know the answer to that. 15 Q. When the Barclays folks said if they 16 couldn't get to closure on Friday, they would 17 have to terminate the repo, was there any 18 reaction from the Lehman folks to that 19 statement? 20 A. We understood they had to do what was 21 within their rights and what they felt was 22 appropriate. 23 Q. Who said that? 24 A. McDade. 25 Q. I'm going to show you, Mr. Kirk,</p>
<p style="text-align: right;">Page 88</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 what's previously been marked as Exhibit 21. 3 Take a moment to look through the document. 4 (Document review.) 5 A. Okay. 6 Q. Is that the document, the e-mail you 7 referred to a moment ago? 8 A. Yes. 9 Q. At the very bottom of the document, 10 paragraph 3, and this is within the e-mail from 11 Reilly to Lowitt, Gelband, Tonucci and Kelly, is 12 the following, "Not clear on the amount of block 13 discount or how we make it happen. Defaulting 14 on repo could be the best, as discount could be 15 taken from haircut." Do you see that? 16 A. Uh-huh. 17 Q. You may have said something a moment 18 ago about this, but let me ask you, did you have 19 an understanding when you saw this e-mail of 20 what it was Mr. Reilly was talking about, using 21 the repo? 22 A. No, this was before I was involved, 23 and I was CC'd on this e-mail because of my work 24 in the auction rate book and the prime brokerage 25 financing at the time.</p>	<p style="text-align: right;">Page 89</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Okay. So the first paragraph of 3 Mr. Reilly's e-mail refers to the auction rate 4 book? 5 A. Yeah. 6 Q. And the question appears to be whether 7 it's staying or going in the transaction, yes? 8 A. Right. 9 Q. And was it your understanding that it 10 was that first question that was the reason it 11 was forwarded to you, because you're in the ARS 12 world? 13 A. I had been in the ARS world in my 14 previous job, and I assumed it was forwarded to 15 me so they could figure out who should answer 16 these questions, who would be most expert to 17 answer them. 18 Q. All right. So when you got the whole 19 e-mail, including the other two questions -- 20 A. Yep. 21 Q. -- am I fairly understanding your 22 testimony that you didn't really focus on 3 23 because it wasn't in your area of 24 responsibility, you didn't understand it to be 25 addressed to you?</p>

<p style="text-align: right;">Page 90</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. As a matter of fact, my answer 3 indicates what I did was I redirected them to 4 people I thought could be helpful.</p> <p>5 Q. Okay.</p> <p>6 A. That's what I thought my 7 responsibility would be.</p> <p>8 Q. Okay.</p> <p>9 A. Try to put point them in a direction.</p> <p>10 Q. Beg your pardon.</p> <p>11 And with respect to the third 12 question, you say, "The third question is 13 definitely for Cogs," C-O-G-S. Is that a 14 reference to Mr. Coghlan?</p> <p>15 A. John Coghlan, yes.</p> <p>16 Q. John Coghlan, okay. And why was it a 17 question for John Coghlan?</p> <p>18 A. Because he was head of repo financing 19 at the firm.</p> <p>20 Q. Do you know if Mr. Coghlan ever did 21 address the third question?</p> <p>22 A. No idea.</p> <p>23 Q. Now, when you were in the Friday 24 meeting and the topic of the repo was being 25 discussed – withdrawn.</p>	<p style="text-align: right;">Page 91</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 This is sent, this e-mail comes to you 3 on Thursday?</p> <p>4 A. Yes.</p> <p>5 Q. At roughly 6:40 in the morning. Note 6 that that's Greenwich mean time shown there.</p> <p>7 A. Yeah.</p> <p>8 Q. The next morning you're in a meeting 9 where the repo is being discussed. Did that 10 trigger any recollection in your mind about, you 11 know, an e-mail discussion the prior day about 12 using the repo as a means of making the block 13 discount happen?</p> <p>14 A. No, I, you know, I get 500 e-mails a 15 day, and during this period of time we were 16 getting probably twice that. So ...</p> <p>17 Q. And when you saw a reference --</p> <p>18 A. I was answering all of them, so, you 19 know, or as many of them as I could.</p> <p>20 Q. And also to the mysterious number that 21 we finally identified.</p> <p>22 A. Yes, and then there's the mysterious 23 number.</p> <p>24 Q. Now, the –</p> <p>25 A. I don't think the company's in</p>
<p style="text-align: right;">Page 92</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 business anymore.</p> <p>3 Q. Was there a reference to the -- any 4 discussion in the Friday meeting of a discount?</p> <p>5 A. No, not that I recall.</p> <p>6 Q. Okay. So I'll summarize it just to 7 frame my next question so you're not married to 8 how I do this. But as I understand it, the 9 meetings happened, you identified the JPM 10 problem, the recommendation is made to transfer 11 what's in the repo, and there's some issues 12 about how to value what's in there; is that a 13 fair summary?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And the general sense of the 16 meeting from both sides of the table is, okay, 17 let's go to it and try and figure this out, we 18 have until about 4 o'clock to see if we can 19 solve this, yes?</p> <p>20 A. Yes.</p> <p>21 Q. And Barclays says if we can't reach a 22 resolution of that by about 4 o'clock, we may 23 have to terminate the repo, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And McDade has said if that comes to</p>	<p style="text-align: right;">Page 93</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 be, you know, you have to do what you have to 3 do?</p> <p>4 A. Those are your rights.</p> <p>5 Q. And you don't know if the repo was in 6 fact ever terminated by Barclays?</p> <p>7 A. I don't know that.</p> <p>8 Q. Okay. So now what happens? Does the 9 meeting end or is there further discussion?</p> <p>10 A. I recall the meeting ending at that 11 time.</p> <p>12 Q. And what did you do next?</p> <p>13 A. I went back to my office. I called 14 the various senior executives I was going to 15 meet with and told them that we should be 16 getting a new schedule at some point of assets 17 that we would have to -- they should ignore that 18 schedule of assets and we would be getting a new 19 schedule of assets at some point to try to put 20 some values on.</p> <p>21 Q. When you say "ignore that schedule of 22 assets," again, for clarity of record, are you 23 talking about Exhibit 19, the original financial 24 schedule?</p> <p>25 A. I'm sorry, no, I'm talking about the</p>

<p style="text-align: right;">Page 94</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 list of hundred assets that was delivered to the 3 desk early that morning.</p> <p>4 Q. Got it. As part of the fire sale 5 liquidation?</p> <p>6 A. Correct.</p> <p>7 Q. And you told them they would be 8 getting a new list of assets. Who is it you're 9 having these communications with?</p> <p>10 A. I certainly called Mike Gelband and I 11 would have called some subset, although I don't 12 recall who I spoke to specifically or who Mike 13 spoke to, but I would have called either 14 Kaushik, Charlie, Eric and Gerry.</p> <p>15 Q. Eric is Eric Felder?</p> <p>16 A. Yes.</p> <p>17 Q. And Gerry is Gerald Donini?</p> <p>18 A. Yes.</p> <p>19 Q. And who is Charlie? Is that Charlie 20 Spero?</p> <p>21 A. Spero, uh-huh.</p> <p>22 Q. And did do you this on a conference 23 call? Call them separately? In a meeting?</p> <p>24 A. Probably called them separately.</p> <p>25 Q. And what happened after that?</p>	<p style="text-align: right;">Page 95</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. We waited for a deliverable schedule 3 from finance.</p> <p>4 Q. Did you get one?</p> <p>5 A. Got one at sometime within the hour.</p> <p>6 Q. And from whom within finance did you 7 receive that?</p> <p>8 A. I don't remember who it was.</p> <p>9 Q. Who within finance was in charge of 10 that piece?</p> <p>11 A. It would have been some combination -- 12 well, no, most likely it would have been Paolo, 13 working with accounting.</p> <p>14 Q. And Paolo or somebody at his direction 15 delivers a schedule. To whom is it delivered?</p> <p>16 A. I don't recall, but I'm sure it was 17 instructed to be delivered directly to the 18 people on this list that I mentioned before and 19 myself and Mike.</p> <p>20 Q. And what happened with the list?</p> <p>21 A. We asked the senior managers to try to 22 value the list given the market conditions that 23 day, and generally the response was the markets 24 are too volatile, there's too many line items, 25 it's not possible to get this done in any</p>
<p style="text-align: right;">Page 96</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 pinpoint fashion in this timeframe, but we'll 3 try.</p> <p>4 Q. And at some point was there -- did 5 they solve that problem? Did they produce 6 valuations?</p> <p>7 A. The only valuations we got was that -- 8 I don't know what they communicated to Barry 9 Ridings or the people working on that specific 10 testimony.</p> <p>11 Q. Uh-huh.</p> <p>12 A. But I got the word back generally that 13 many of these positions were so illiquid that, 14 you know, that if we were to try to sell them, 15 given our circumstances, you know, the bids 16 might be down 20 percent.</p> <p>17 Q. Was there any discussion about looking 18 at the valuations that Bank of New York had 19 given to what was in the repo?</p> <p>20 A. We didn't have access to Bank of New 21 York's valuations, I don't believe.</p> <p>22 Q. Did you talk to anyone who was 23 familiar with how repurchase -- more familiar 24 than you with how repurchase agreements worked 25 to see if the collateral agent applied</p>	<p style="text-align: right;">Page 97</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 valuations to what was held as collateral?</p> <p>3 A. I don't recall having that specific 4 conversation.</p> <p>5 Q. Do you know if anyone did have that 6 discussion, that conversation with Barclays?</p> <p>7 A. They might have.</p> <p>8 Q. Without regard to the particular 9 detail or even the number --</p> <p>10 A. Yeah.</p> <p>11 Q. -- you had a sense of whether by, you 12 know, at some point on that Friday a value was 13 put on the collateral within the repo?</p> <p>14 A. We at Lehman determined that the 15 out -- the volatility of those outcomes we 16 couldn't put a number that was specific on it. 17 It was, given how illiquid many of the assets 18 were, some of the assets you could value, but 19 the markets were tremendously volatile all week.</p> <p>20 We had had, you know, been getting 21 closed out of -- just the prior day we got 22 closed out of a repo, a futures position on the 23 CME that had excess margin of, you know, \$1.6 24 billion.</p> <p>25 As far as we could tell, the markets</p>

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<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 hadn't moved that much. Many of them were in</p> <p>3 Treasury and government bond futures, but the</p> <p>4 CME called us to inform us they had closed us</p> <p>5 out of the position and we had lost all the</p> <p>6 money in excess margin. So it was becoming very</p> <p>7 hard to value even what were deemed to be liquid</p> <p>8 securities.</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 owned it, that we would end up with no excess</p> <p>3 from that collateral, and that from the very</p> <p>4 high-level work that the senior risk managers</p> <p>5 did, which we were relying upon, that we could</p> <p>6 be well out of the money, it was likely that we</p> <p>7 could be well -- we would be well out of the</p> <p>8 money in that below the haircut, which I</p> <p>9 believe, understood to be somewhere between 5</p> <p>10 and 10 percent.</p>	
<p>9 Q. Just so we're clear here, the closing</p> <p>10 out of the position by the Chicago Merc doesn't</p> <p>11 bear on the collateral that's within the repo;</p> <p>12 that's a separate event, correct?</p>	<p>11 Q. When you referred to a moment ago to</p> <p>12 one of the risks was that we would not end up</p> <p>13 with -- we would end up with no excess, what did</p> <p>14 you mean by that?</p>	
<p>13 A. That is a separate event, but it</p> <p>14 was -- it was demonstrative of the volatility</p> <p>15 and the issues we were wrestling with.</p>	<p>15 A. Meaning that if Barclays closed us out</p> <p>16 of the repo, our experience had been, not just</p> <p>17 in that period of time but other cases, but</p> <p>18 certainly in that week, that their liquidation</p> <p>19 of that collateral would eat through more than</p> <p>20 the haircut they had and that they would not get</p> <p>21 back a hundred cents on the dollar. So we,</p> <p>22 Lehman, would not receive any proceeds back from</p> <p>23 the liquidation of that collateral.</p>	
<p>16 Q. And the question that I would like to</p> <p>17 put is, did Lehman come to some number, did it</p> <p>18 come to a value, a valuation of the collateral</p> <p>19 that was within the Barclays Repurchase</p> <p>20 Agreement?</p>	<p>24 Q. What was your understanding of what</p> <p>25 would happen if there was excess collateral?</p>	
<p>21 A. We couldn't come up with a specific</p> <p>22 value. We didn't have time. We knew we</p> <p>23 didn't -- we tried, but we couldn't, and we knew</p> <p>24 the risk was that Barclays would close out of</p> <p>25 the repo and take all that collateral, so they</p>	<p style="text-align: right;">Page 100</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Who would keep that?</p> <p>3 A. If there was excess collateral, Lehman</p> <p>4 would keep that value.</p> <p>5 Q. Was that discussed at the Friday</p> <p>6 meeting, that if there was excess collateral, it</p> <p>7 would stay with Lehman?</p> <p>8 A. There was not a discussion of closing</p> <p>9 out the repo and the mechanics of it.</p> <p>10 Q. So did there come a point on Friday</p> <p>11 where Lehman communicated to Barclays either --</p> <p>12 where it communicated a value of the repo or it</p> <p>13 said it couldn't? What happens next vis-a-vis</p> <p>14 talking to Barclays.</p> <p>15 A. In terms of talking to Barclays, the</p> <p>16 next meeting was at some point, call it 3</p> <p>17 o'clock in the afternoon, and they were</p> <p>18 indicating that the -- their view of the value</p> <p>19 of the repo securities was far below the stated</p> <p>20 value and below their loan value and that Lehman</p> <p>21 should attempt to find other unencumbered</p> <p>22 assets, should continue to attempt to find other</p> <p>23 unencumbered assets or the transaction may not</p> <p>24 take place.</p> <p>25 Q. Now, is this response from Barclays</p>	<p style="text-align: right;">Page 101</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 after the Friday meeting has ended? I want to</p> <p>3 get a sense of the timeline within Friday of</p> <p>4 when Barclays does this.</p> <p>5 A. This is like 3 o'clock in the</p> <p>6 afternoon.</p> <p>7 Q. Does Barclays tell you, does Barclays</p> <p>8 tell Lehman how much difference has to be made</p> <p>9 up?</p> <p>10 A. No.</p> <p>11 Q. Is your answer that you don't remember</p> <p>12 or that you remember that they didn't?</p> <p>13 A. I remember they didn't.</p> <p>14 Q. So what happens now?</p> <p>15 A. We said we'll continue to look. And</p> <p>16 Ian and I had a conversation with McDade</p> <p>17 offline, just he and I. I said, I don't have</p> <p>18 any basis or enough information to argue with</p> <p>19 them about their point of view, about the value</p> <p>20 of collateral, and that the high-level work</p> <p>21 we've been doing leads me to believe that they</p> <p>22 have a reason to be nervous about this.</p> <p>23 Q. And what was --</p> <p>24 (Mr. Kelley confers with the witness.)</p> <p>25 A. Barclays.</p>

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1 HIGHLY CONFIDENTIAL - A. KIRK	1 HIGHLY CONFIDENTIAL - A. KIRK
2 I'm sorry. Who is "they," he asked	2 shortfall was in the billions of dollars?
3 me. Barclays has a reason to be nervous.	3 A. Yes.
4 Q. And did McDade give any instructions	4 Q. But do you have a recollection of
5 or suggestions about what to do next?	5 whether it was between 2 billion and a gazillion
6 A. He said, well, make sure Ian is	6 billion? Is there some range you were thinking
7 working on any possible unencumbered assets.	7 of at the time?
8 Q. So did McDade give a target of any	8 A. Somewhere between 2 and 5.
9 kind of how much in unencumbered assets needed	9 Q. And I'm trying to get a sense here,
10 to be found?	10 that's why I keep pushing at the number —
11 A. At that point, all we could do was	11 A. Yeah.
12 figure out what was there, and specifically I	12 Q. -- I'm trying to get a sense here of
13 don't recall, but I do -- I do recall that the	13 what the project is. Is it go find every
14 shortfall was described as, you know, billions	14 unencumbered asset we have on the one end of the
15 of dollars.	15 possibilities, or we have to make up this
16 Q. And by "the shortfall," you're	16 specific shortfall, go find that amount at the
17 referring to what?	17 other?
18 A. The value that Barclays thought those	18 A. I didn't have the conversation. Bart
19 repo assets were worth versus their stated	19 had the conversation with Ian, so I didn't have
20 value.	20 that conversation specifically with him.
21 Q. That's the shortfall between what	21 Q. So you don't know one way or the other
22 Barclays thought they were actually worth and	22 whether Mr. McDade gave a target of some kind to
23 the amount of the repo?	23 Mr. Lowitt?
24 A. Yeah.	24 A. No, I don't know that.
25 Q. So your recollection is that the	25 Q. Your understanding from your view of
Page 104	Page 105
1 HIGHLY CONFIDENTIAL - A. KIRK	1 HIGHLY CONFIDENTIAL - A. KIRK
2 things was there was a shortfall?	2 unencumbered assets were located that could be
3 A. Yes.	3 transferred to Barclays?
4 Q. It wasn't Barclays was saying it	4 A. Sometime late in the afternoon between
5 wouldn't be made up out of the repo bucket?	5 3 and 4, Ian came into a meeting where I was
6 A. Yeah.	6 about to start a phone call with Bart, the Weil
7 Q. Therefore, other assets, unencumbered	7 Gotshal lawyers on the phone, and I was sitting
8 assets, capable of delivery had to be found?	8 in the room with Mark Shapiro and I think it was
9 A. Right.	9 Jim Seery and the Barclays, again, Diamond,
10 Q. It was in the billions, but for	10 Ricci, Klein and Keegan, and Ian came in and he
11 your -- for the purposes of what you were doing,	11 said there's a -- there's a schedule of assets
12 you didn't really need to know the number, you	12 that we have that are unencumbered. I believe
13 just needed to know the problem had --	13 the number was \$1.9 billion of marked value.
14 A. Right, I was not the one who was going	14 In addition, he said there might be
15 to solve those specific issues, so that was	15 value in our 15c3 margin, which at the time I
16 someone else's job.	16 remember that specifically because I was like,
17 Q. Was anyone other than Lowitt involved	17 "Gee, what's that? I've never heard of that."
18 in the particulars of solving the problem?	18 So he said there might be value there, I don't
19 A. I don't know the answer to that.	19 know yet, and there might be others.
20 Q. Did you ever learn whether Lowitt	20 So we said to Ian, well, get us a
21 enlisted others in the task of finding	21 schedule of what's in the 1.9 billion in the --
22 unencumbered assets?	22 I think he referred to it as being in the box
23 A. No, I didn't, I didn't find out.	23 unencumbered of these unencumbered assets, i.e.,
24 Q. Did there come a time when you learned	24 they were being financed by Lehman's unsecured
25 whether additional value, additional	25 debt, I believe at the time, or equity, and he

<p style="text-align: right;">Page 106</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 came back with that list, showed it to myself 3 and to Keegan and some others. 4 Keegan looked at it and said, you 5 know, this is the -- these assets are even 6 harder to value than what we already have. I 7 don't even know what these are. I specifically 8 remember there being residential mortgage 9 residual interests and things like IOs and some 10 very illiquid aged positions in high-yield and 11 distressed debt. I don't specifically recall 12 what else it was, but I do recall the list was 13 a -- there was a reason why there was nobody 14 financing those assets and it was because they 15 were the most illiquid and hardest to value 16 securities that Lehman Brothers owned on its 17 balance sheet. 18 Q. So when Keegan said these are even 19 harder to value than -- 20 A. Yeah. 21 Q. -- than the other stuff, was he 22 comparing this new schedule with the 23 hard-to-value stuff in the repo? 24 A. Yes. 25 Q. And apart from saying it was hard to</p>	<p style="text-align: right;">Page 107</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 value, did Keegan have anything to say about 3 that? 4 A. He said I don't know how I'm going to 5 put a value on this of any positive number. 6 Q. Describe for me as best you can the 7 conversation about that topic and who said what. 8 A. Ian came in. He delivered this -- he 9 said -- we started the conversation with Ian 10 delivering the list of assets, and he handed it 11 to Keegan -- he handed out probably five copies. 12 Most people were just staring at it saying 13 nothing. 14 Mike looked at it and said, you know, 15 I -- what's this asset? What's that asset? I 16 think Ian may have answered specifically if he 17 knew what the nature of those assets were, 18 because in like residential mortgages you have 19 names for deals that unless you knew that that 20 was a residential mortgage deal, you wouldn't 21 know what it was, you know, Sasco or things of 22 that nature. 23 And Ian had some familiarity with 24 the -- with what the assets were because he had 25 been responsible for financing those sorts of</p>
<p style="text-align: right;">Page 108</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 assets or, in this case, having the equity 3 finance the assets. And so there was some back 4 and forth around that, and Keegan made the 5 conclusion that he was not going to warrant any 6 positive value on these assets from his seat, 7 and he made that -- he sort of said that to Rich 8 Ricci and Bob Diamond: "I can't value these. I 9 would be very nervous about putting a positive 10 value on them." 11 Q. So, just to kind of cut to the end of 12 the sequence here, does Barclays agree to take 13 these additional buckets of value, you know, the 14 15c3 and the assets, the unencumbered assets in 15 the box? 16 A. Yes. 17 Q. And when they make that agreement, are 18 you present? Was that at this meeting? 19 A. Yes. 20 Q. And tell me what was said in that 21 regard. 22 A. That, all right, we don't know what 23 they're worth. They might be worth something, 24 so we want them. And Bart was on the phone, he 25 agreed -- he agreed to that, and I think that</p>	<p style="text-align: right;">Page 109</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 was the sum and the substance as to what was 3 said about those assets. 4 Q. Was any number put on now the total 5 value of the deal, combining the assets that 6 were in the repo plus the 15c3 and the 7 unencumbered assets in the box? 8 A. I don't recall a specific number being 9 put on the -- on the deal. 10 Q. Whether you recall today what the 11 number was, I'm going to press on this a little 12 bit, do you recall if a number was put out 13 there? 14 A. I'm sorry, I don't recall what -- 15 whether -- I don't recall whether there was a 16 number specifically put out there. 17 Q. Okay. And did you have a sense after 18 this conversation, Mr. Lowitt reports on the 19 15c3 assets and the unencumbered assets and 20 Keegan says, I can't value those and then the 21 agreement's made, well, we'll take them because 22 there may be some value, whether after that 23 point there were additional searches for value? 24 Do you know one way or the other? 25 A. I don't recall one way or another. I</p>

<p style="text-align: right;">Page 110</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 don't recall what the whole -- I recall 15c3. I 3 recall this 1.9 billion because I was sitting 4 there with the list and I said, "Gee, what is 5 15c3?" So I recall those two. I don't recall 6 if there were other categories discussed during 7 that meeting.</p> <p>8 Q. You said a moment ago that Lowitt, 9 when he reported on the 15c3 piece, he put that 10 at about 1.9 billion?</p> <p>11 A. That was the marked value.</p> <p>12 Q. Of marked value. And that there was 13 some value, but -- of what was in the box, but 14 he didn't know what it was?</p> <p>15 A. It was some value in 15c3, but he 16 didn't know how much there would be.</p> <p>17 Q. So when that meeting ended, did you 18 have, whether you remember the number or not 19 today, did you have a sense of what the total 20 additional value was between the 15c3 and the 21 contents of the box?</p> <p>22 A. No.</p> <p>23 Q. Was there any plan made to calculate 24 that number?</p> <p>25 A. I think Ian was putting together a</p>	<p style="text-align: right;">Page 111</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 schedule that he would communicate to Bart 3 with -- there was a, first of all, in that 4 discussion there was a wrap-up of this is what 5 the deal looks like. It's got the 45 billion, 6 it's got the, on the asset side, it's got this 7 1.9, it's got 15c3, it may have had, you know, 8 other components to it.</p> <p>9 Bart agreed, Ian and Bart agreed that 10 these were the components on the assets side. 11 It had the assumed liabilities. They agreed 12 that those were the assumed liabilities that 13 were going to agree, I don't remember the exact 14 numbers, and they said, okay, do we have an 15 agreement? Barclays said yes. Ian was going to 16 go codify that, I believe, and talk to Bart.</p> <p>17 Bart was in a car with Weil lawyers on 18 his way to bankruptcy court. That's why he 19 wasn't in the room.</p> <p>20 Q. When you say Ian was going to go away 21 and codify that, you mean put the schedules 22 together?</p> <p>23 A. I think so, yes, that's what I mean.</p> <p>24 Q. Did Mr. Klein say anything about this 25 process adding additional value for Barclays?</p>
<p style="text-align: right;">Page 112</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. No, not adding additional value. He 3 didn't comment on that.</p> <p>4 Q. Did Klein make any recommendation in 5 your hearing as to whether Barclays should or 6 should not accept this deal?</p> <p>7 A. Klein recommended that they accept the 8 deal if -- when they got the additional, all the 9 additional collateral.</p> <p>10 Q. I don't mean this to be sarcastic. I 11 just can't come up with another way of phrasing 12 it.</p> <p>13 We're looking around for all this 14 additional value and your memory is not clear on 15 whether there was a target or not?</p> <p>16 A. Yeah.</p> <p>17 Q. Framed that way, what was the project 18 here? Was it to go find everything else and 19 turn it over, or was it to find some, some 20 identifiable bucket of value until Barclays 21 said, yeah, that's enough? Do you see the 22 distinction I'm making?</p> <p>23 A. Yes, it's -- the project was the 24 second, not the first.</p> <p>25 Q. Okay. So the idea was there would be</p>	<p style="text-align: right;">Page 113</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 some value left in Lehman; it was just a 3 question of finding enough additional value to 4 make Barclays still close?</p> <p>5 A. Yeah. And that project was Ian's 6 project, not mine. I wasn't -- I was an 7 observer to this part of the process.</p> <p>8 Q. What was Ian's manner in this meeting? 9 I mean, it's a tough week for everybody, but 10 what's his demeanor?</p> <p>11 A. He hadn't slept in a week, so he was a 12 little harried.</p> <p>13 Q. Did Ian identify other potential 14 sources of additional value that he had looked 15 at apart from the box and 15c3?</p> <p>16 A. He --</p> <p>17 MR. HUME: Objection. Asked and 18 answered.</p> <p>19 Q. You can answer.</p> <p>20 A. No, he, as I said, he may have, but I 21 didn't -- I don't remember.</p> <p>22 Q. You don't remember, then, any 23 particular other sources that he might have 24 discussed?</p> <p>25 A. No, I don't.</p>

<p style="text-align: right;">Page 114</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 (Discussion off the record.) 3 BY MR. GAFFEY: 4 Q. While we're pulling a couple of 5 documents out, Mr. Kirk, let me see if I can get 6 the rest of, you know, the blocks of your day. 7 This meeting ends. Lowitt is given 8 the task of codifying -- your word -- you know, 9 getting a list together? 10 A. Yes. 11 Q. What do you do next? 12 A. I just go back to my office. Sit 13 there silently, stunned. 14 Q. Maybe try to get some sleep? 15 A. Yeah. 16 Q. Do you have any role or involvement in 17 this asset collection process we've been talking 18 about after this point? 19 A. No. 20 Q. Did you go to the hearing? 21 A. No. 22 Q. Did anyone render reports to you from 23 the hearing -- 24 A. Yes. 25 Q. -- as to what was going on?</p>	<p style="text-align: right;">Page 115</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Okay. Who did that? 3 A. I got a couple e-mails from Jim Seery 4 and I had a conversation with Jean-Francois 5 Astier. 6 Q. And what were the, in sum and 7 substance, what were you hearing in the reports 8 from -- we don't have to go through this chapter 9 and verse, but what were the nature of the 10 reports you were getting back from the -- 11 A. There was, first of all, they were -- 12 JF and Jim were trying to understand what the 13 new deal was, so I had a conversation with JF 14 trying to explain to him what I knew, and 15 because they were, I believe, going to 16 participate in a meeting with the creditors 17 explaining this, what the deal was. 18 And then I got -- so there was some 19 back and forth to just try to reach me on that 20 front, and then there was -- they sent me a 21 couple updates of, you know, Bart's proffers 22 being read and there's cross-examination, and 23 then ultimately the deal was done with some 24 quotes from Judge Peck later that night. 25 Q. Did anyone --</p>
<p style="text-align: right;">Page 116</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. And then somebody called me when it 3 was done. 4 Q. Somebody called to say the judge has 5 approved the deal? 6 A. Yeah. 7 Q. Did you get reports from anyone that 8 told you whether or not anyone had told the 9 judge that this was a new transaction, different 10 transaction? 11 A. I didn't get presented -- one early 12 conversation I had with JF, I didn't talk to 13 anybody directly by phone, and I just got a few 14 cursory e-mails. 15 Q. And -- 16 A. But at one point there was, you know, 17 my understanding was there was -- and early, 18 there was discussions before they went, you 19 know, to court to wrap it up with various 20 constituents. And certainly there were 21 constituents there, Bart, Michael Klein and 22 others, that had the details. 23 Q. Now, did you stay in your office until 24 you heard about the -- 25 A. No. No. I went home and I went to</p>	<p style="text-align: right;">Page 117</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 bed sometime late that evening. 3 Q. Sometime after you heard that the deal 4 had been approved? 5 A. No. No. I went to bed before that. 6 Somebody woke me up out of bed. 7 Q. Did you continue to do any work or did 8 you perform any tasks in connection with the 9 transaction -- 10 A. No. 11 Q. -- over the weekend? 12 A. Saturday I had no involvement. On 13 Sunday, Bart asked me to come in and try to 14 participate in the closing of the transaction at 15 Weil Gotshal. 16 Q. Did you do that? 17 A. Yes. 18 Q. Just so I can plan a little bit for 19 what I want to ask you after lunch break, give 20 me an outline of what you did on the Sunday. 21 A. So we went over to Weil. We, Bart and 22 I, were put in a room. You know, we were there 23 as a resource as people were trying to put 24 schedules together, et cetera. 25 An issue came up early in the morning</p>

<p style="text-align: right;">Page 118</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 around the settlement of trades on Monday and 3 how they were going to be handled, Lehman 4 trades, customer trades with Lehman. We tried 5 to help work that issue out, and then we 6 effectively became observers of this dispute 7 between JPMorgan and Barclays, as there were 8 many meetings held into the evening that 9 JPMorgan came to Weil about 6 o'clock Sunday 10 night and at the urging of the Federal Reserve 11 and they walked through, described in very large 12 group meetings the issues they had. 13 We sort of hung around and eventually 14 were told that Barclays and JPMorgan had 15 resolved their dispute and that the deal could 16 go to closure. 17 Q. When you say "we," are you talking 18 about yourself and Mr. McDade? 19 A. And there were others at Lehman as 20 well. 21 Q. Who else? 22 A. Jim Seery was there. I called him 23 late in the afternoon. Ian Lowitt was there. 24 Paolo was there. A guy name Alastair Blackwell 25 was there. Steve Berkenceld was there. That's</p>	<p style="text-align: right;">Page 119</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 everybody I recall. 3 Q. Did you learn how the dispute between 4 JPM and Barclays had been resolved, what the 5 terms of that resolution were? 6 A. They didn't tell us. 7 Q. So did anybody ask, anybody say how 8 did this issue get resolved? 9 A. Yeah, and they said it's between us 10 and -- Barclays representatives told us -- well, 11 I don't remember if it was the lawyer or who 12 specifically, but a representative from Barclays 13 said that's between Barclays and JPMorgan. 14 Q. So the closing did not take place on 15 the Sunday, correct? 16 A. It eventually I think closed Monday 17 morning, but it was one continuous -- I left at 18 2 A.M., and then they worked towards closing at 19 some point in the morning prior to the markets 20 opening. 21 Q. Did you go back for the closing? 22 A. No. 23 Q. Do you know if any additional 24 documentation was done to reflect the new 25 agreement that had been reached on Friday?</p>
<p style="text-align: right;">Page 120</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. Oh, I'm sure there was lots of 3 documentation, but I'm not a lawyer so I wasn't 4 reviewing it. 5 Q. Do you know, apart from whether you 6 read it or reviewed it, my question is do you 7 know if a new -- a new contract or an amendment 8 or anything else was written up that would 9 reflect the fact that the deal had changed on 10 Friday? 11 A. I assume so. I don't -- I never saw 12 actual evidence of it, but ... 13 Q. I've asked you a couple of times when 14 you said you've assumed. What's the basis of 15 the assumption? The fact that it -- 16 A. That you couldn't proceed with a 17 commercial transaction without it. 18 Q. Do you have any factual basis to think 19 that it was? Did you talk to anybody about it? 20 Did you see any documents? 21 A. I didn't see any documents. Certainly 22 we were advised by Weil that the documents were 23 in good order. 24 (Exhibit 316, an e-mail chain with 25 attached balance sheet, marked for</p>	<p style="text-align: right;">Page 121</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 identification, as of this date.) 3 Q. I have put before you, Mr. Kirk, a 4 three-page document. I'll ask you to take a 5 look through it sufficiently to tell me whether 6 you've seen it before. 7 A. Yes, I've seen it. 8 Q. Did you see it at or around the time 9 that it's -- of September 19 at 6:16 A.M.? 10 That's the date at the top. 11 A. Yes. 12 Q. And was this sent to you -- was it 13 your understanding this was sent to you to 14 prepare for that Friday meeting we've been 15 talking about? 16 A. It was one, one of the documents that 17 I assumed we would review. 18 Q. Okay. And do you recall -- 19 MR. HUME: Are you marking it as an 20 exhibit? 21 MR. GAFFEY: Yes, I did, Hamish. It's 22 316. 23 MR. HUME: I'm sorry. 24 Q. Do you recall reviewing it at the 25 Friday meeting?</p>

<p style="text-align: right;">Page 122</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. No, I actually don't recall reviewing 3 this.</p> <p>4 Q. Let me just direct your attention, 5 sir, to the third page -- well, to the second 6 page. You'll see that that's a balance sheet 7 that's attached to the e-mail and then referred 8 to in the second e-mail.</p> <p>9 A. Yes.</p> <p>10 Q. Do you know who prepared this balance 11 sheet?</p> <p>12 A. I don't know specifically who prepared 13 it, but it would have been prepared by 14 accounting.</p> <p>15 Q. Okay. And --</p> <p>16 A. Well, the e-mail seems to indicate 17 Martin -- somebody who worked for Martin Kelly 18 had prepared it.</p> <p>19 Q. And within the balance sheet, sir, the 20 fifth column that's entitled Transaction 21 Adjustments, do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know what that column 24 represents, what the entries in that column are 25 meant to represent?</p>	<p style="text-align: right;">Page 123</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Only from reading it.</p> <p>3 Q. I don't want you just to guess from 4 the face of the document.</p> <p>5 A. No.</p> <p>6 Q. Do you recall any discussion of 7 transaction adjustments?</p> <p>8 A. No.</p> <p>9 Q. And in particular, if you could take a 10 look at the last page of the document, I would 11 ask you to take a look at the Transaction 12 Adjustments column where it says 2 billion and 13 1.645 billion, are you with me?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And you'll see that those relate to, 16 if you read across to the left, items Bonus 17 Payable and Cure Payments?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And if you read across with me on the 20 Cure Payments line, you'll see, as of 8/31/08, 21 the number 701 is there, you with me?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And then as of 9/17/08, 605?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And then there's a transaction</p>
<p style="text-align: right;">Page 124</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 adjustment of 1,645,000,000?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Resulting in a balance sheet transfer 5 total of 2.25 billion, do you see that?</p> <p>6 A. Uh-huh. Uh-huh.</p> <p>7 Q. 2.25 is the amount that you recall 8 Mr. Tonucci telling you was the assumed 9 liability for cure that was Barclays' 10 consideration in the deal?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any knowledge or have you 13 been involved in any discussion where a 14 transaction adjustment of 1.645 billion was made 15 against Lehman's books? Do you know if that 16 number was written up?</p> <p>17 A. If it was written up, meaning?</p> <p>18 Q. Do you know if the amount for cure 19 payments shown on Lehman's books was written up 20 by 1.645 billion?</p> <p>21 A. Oh, I have no idea.</p> <p>22 Q. Did you ever have a discussion with 23 Mr. Tonucci or Mr. Kelly or Mr. Lowitt about 24 that topic?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 125</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. And I'll ask you the same question, 3 sir, with respect to the line for bonus payable. 4 Do you see a transaction adjustment of 2 5 billion, and the 2 billion is contained in the 6 Balance Sheet Transferred column?</p> <p>7 A. Yes.</p> <p>8 Q. Any conversations with Lowitt, Kelly 9 or Tonucci about that topic?</p> <p>10 A. No, no conversations.</p> <p>11 Q. Any conversations with anyone else 12 about that topic?</p> <p>13 A. No.</p> <p>14 Q. Was that topic addressed at the Friday 15 meeting we've been talking about, to your 16 recollection?</p> <p>17 A. Only to the extent that there was a 18 liability that was 2 billion and 2 and a quarter 19 billion that's reflected in this balance sheet 20 that had been agreed to prior.</p> <p>21 Q. Do you know if those liabilities of 2 22 billion and 2 and a quarter billion were based 23 on Lehman's accruals on its books, or were they 24 agreed numbers?</p> <p>25 A. I don't know.</p>

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1	HIGHLY CONFIDENTIAL - A. KIRK	1	HIGHLY CONFIDENTIAL - A. KIRK
2	Q. Mr. Kirk, I'm showing you what was	2	A. I don't recall specifically what this
3	previously marked as Exhibit 8 at a prior	3	was used to describe to me, except that it was
4	deposition. Take a look through it, sir,	4	a -- this I assume is a, just a comprehensive
5	sufficiently to tell me whether you've seen it	5	list of the assets that were going -- were
6	before.	6	planned to be transferred to Barclays.
7	A. Yes.	7	Q. Now, if you would take look, Mr. Kirk,
8	Q. Okay. And what is the document, sir?	8	at the third page of the document. It's a --
9	A. This is a list of assets that Lehman	9	MR. KELLEY: Sorry, Bob, you said the
10	Brothers owned.	10	third page?
11	Q. Was this document -- and again, just	11	MR. GAFFEY: Yes, the third page.
12	for clarity, there's a time on the cover e-mail	12	A. The Woodbum?
13	of Mr. Reilly's e-mail to you of 10:51 A.M.,	13	Q. No, just before that.
14	GMT, which would put it at 6:51 New York time,	14	A. That's my second page.
15	okay?	15	Q. My fault. The second page of the
16	Do you recall receiving this in the	16	document. What do you understand that to be,
17	early morning of Friday?	17	sir?
18	A. Yes.	18	A. I don't recall what this was
19	Q. Is this one of the schedules that	19	particularly. I can read it for the face of it,
20	was -- was this schedule sent to you for use at	20	but ...
21	the Friday meeting?	21	Q. Well, if you could read it with the
22	A. Yes.	22	Friday meeting in mind and tell me if it
23	Q. Okay. And what was its purpose? What	23	refreshes your recollection as to what role this
24	is this supposed to tell you that's of use to	24	summary would have played in your activities at
25	you at the Friday meeting?	25	that meeting, that would be helpful.
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1	HIGHLY CONFIDENTIAL - A. KIRK	1	HIGHLY CONFIDENTIAL - A. KIRK
2	A. I don't recall this being discussed	2	MR. GAFFEY: Why don't we take a lunch
3	because we quickly got to, as I described	3	break now.
4	before, that whatever schedules had been	4	(Luncheon Recess; Time Noted: 12:29
5	produced earlier in that week were no longer	5	P.M.)
6	operative.	6	
7	Q. Do you know if the schedule that's	7	
8	attached to Exhibit 8 bears any relation to the	8	
9	schedule that was summarized in Exhibit 19, that	9	
10	is, that --	10	
11	A. I don't remember. I can't tell.	11	
12	Q. Okay. Just back on that page,	12	
13	Mr. Kirk, do you know what the column Excluded	13	
14	is for? Do you know what it means?	14	
15	A. No, I don't know what that means.	15	
16	Q. I take it, then, you wouldn't be able	16	
17	to tell me what "Available for Transfer" means	17	
18	either?	18	
19	A. No, I don't remember what that is.	19	
20	Q. Do you recall anyone discussing this?	20	
21	Whether you recall the contents of the	21	
22	discussion, do you recall anybody discussing	22	
23	this at the meeting?	23	
24	A. I don't recall discussing this	24	
25	particular sheet.	25	

<p style="text-align: right;">Page 130</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 AFTERNOON SESSION 3 (Time Noted: 1:16 P.M.) 4 ALEX KIRK, resumed and 5 testified further as follows: 6 EXAMINATION BY (Cont'd.) 7 MR. GAFFEY: 8 Q. We talked a little bit this morning, 9 Mr. Kirk, about Mr. Shafir leaving on Thursday? 10 A. Yes. 11 Q. Did he just leave? I mean, was it 12 sudden? 13 A. I just got a call after the fact. I 14 don't know what the back and forth was. 15 Q. Did Mr. McDade or did anyone say to 16 you anything to the effect of this would be a 17 problem for Lehman in the deal since Shafir had 18 played a major role in the negotiations, in sum 19 or substance? Did you pick up that sense from 20 anybody? 21 MR. HUME: Objection to the form of 22 the question. 23 A. I don't remember if he described it as 24 a problem, but certainly, you know, there was 25 lots to do that needed to be done.</p>	<p style="text-align: right;">Page 131</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Uh-huh. 3 A. It was not viewed as a happy 4 circumstance. 5 Q. Sure. Were there parts, to your 6 knowledge, were there parts of the deal, of the 7 negotiations in which Shafir would be the only 8 source of knowledge? 9 A. I don't know the answer to that. I 10 wasn't around the negotiations at all earlier in 11 the week, so I don't know who did what. 12 Q. Okay. From your time around there 13 during the week, I mean, I understand your 14 involvement in the deal becomes more intense, as 15 it were, on the Friday, but do you pick up any 16 idea during the week of how involved McDade is 17 in the negotiations? 18 A. I think he was very involved. 19 Q. Is he negotiating particular issues or 20 the deal as a whole? 21 A. Again, I don't have any specifics. 22 They were, all these -- my understanding all 23 these negotiations were taking place on the 32nd 24 floor, which I never went up to the 32nd floor 25 during that period of time except maybe to find</p>
<p style="text-align: right;">Page 132</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 somebody, so ... 3 Q. In the initial conversations with Bart 4 McDade on the Thursday night and with Lehman 5 folks on the Friday morning, does anyone comment 6 on the departure of Shafir and its impact on the 7 deal? 8 MR. HUME: Objection. Asked and 9 answered. 10 MR. KELLEY: Objection as to form. 11 A. Can I answer that question? 12 Q. Yes, I think you can. 13 A. No, with the exception of it's 14 unfortunate that he's left at this moment in 15 time. 16 (Exhibit 317, a document bearing Bates 17 Nos. 10310050, marked for identification, as 18 of this date.) 19 Q. Mr. Kirk, I'll ask you just take a 20 look through that document sufficiently to tell 21 me whether you can remember seeing it before? 22 A. Yes. 23 Q. Did you see it at or around the time 24 that it's dated, September 19? 25 A. Yes.</p>	<p style="text-align: right;">Page 133</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Reading up the e-mail chain from 3 bottom to top, you appear to get added in in the 4 message from Paul Houston to O'Meara, Tonucci, 5 Kirk, Walsh, dated 18th September at 23:12, do 6 you see that? 7 A. Uh-huh. 8 MR. KELLEY: I think you meant 9 Houston. 10 Q. I beg your pardon. I do mean Houston, 11 yes. 12 A. Yes. 13 Q. Do you have an understanding of why 14 you are added into this e-mail conversation at 15 this point? What's the issue? 16 A. The issue appears to be, or I recall 17 it to be the racers trust was a piece of 18 collateral that Barclays had received in the 19 repo. Inside the racers trust -- by the way, 20 there are many racers trusts, so I think racers 21 trust was something that indicated a whole 22 series of financing trusts. It wasn't one 23 particular financing trust. 24 But in one of them there might have 25 been a -- some commercial real estate</p>

<p style="text-align: right;">Page 134</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 collateral, Archstone, in particular, and Mike 3 Mazzei, who is -- ran commercial real estate at 4 Barclays, is pinging the number to the guy in 5 commercial real estate, Paul Houston at Lehman, 6 to try to understand the nature of that of -- 7 well, he's trying to understand something about 8 Archstone relative to that.</p> <p>9 Q. What Is Archstone? 10 A. Archstone is a very large commercial 11 real estate financing that both Lehman and 12 Barclays participated in in the fall of '07.</p> <p>13 Q. Now, in the e-mail in which you're 14 joined in the communication, Houston writes to 15 O'Meara, Tonucci, Kirk and Walsh, "What should I 16 tell him? That the assets are not going to 17 Barclays?" Do you see that? 18 A. Uh-huh.</p> <p>19 Q. What do you understand Mr. Houston to 20 mean when he writes to you that the assets -- 21 "What should I tell them? That the assets 22 aren't going to Barclays?" 23 A. Barclays had specifically told 24 representatives of Lehman Brothers that they 25 didn't want commercial real estate exposure.</p>	<p style="text-align: right;">Page 135</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. So, fairly understood, the issue here 3 is that Barclays does not want the racers, yes? 4 A. Doesn't want commercial real estate. 5 Racers might have a whole variety of collateral 6 inside them.</p> <p>7 Q. Do you know if the racers remained in 8 the assets that were ultimately transferred to 9 Barclays? 10 A. No idea.</p> <p>11 Q. Do you know if there was any 12 discussion with Barclays about whether or not 13 the racers should remain in the value that 14 ultimately was transferred to Barclays? 15 A. If they were in the repo, I believe 16 they were transferred to Barclays because 17 Barclays had possession of them. If they were 18 not in the repo, I believe they were not in.</p> <p>19 Q. Do you know if -- 20 A. And again, this was a series of 21 financings, so there was more than one Racers 22 Trust.</p> <p>23 Q. Do you know if at any point the racers 24 were taken out of the repo and other collateral 25 was substituted for that?</p>
<p style="text-align: right;">Page 136</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. I don't know the answer to that.</p> <p>3 Q. Did you ever hear a discussion about 4 whether the racers could be taken out of the 5 repo and other collateral substituted for them? 6 A. No. 7 This, by the way, seems to indicate 8 that the racers with the Archstone pieces 9 were -- had custody at Chase, JPMorgan Chase.</p> <p>10 Q. I'm about to move on to Tonucci where 11 he says, "They are with Chase now." What does 12 that mean in context? How does it address the 13 problem that's being discussed in the e-mail? 14 A. There was an assumption by Paul 15 Houston that Mike Mazzei was just fishing for 16 information about Archstone which may be 17 proprietary to Lehman Brothers that he would 18 like for purposes other than the deal. So he 19 was looking for a reason not to answer any 20 questions about Archstone and because it 21 wouldn't have been proper if their assets 22 weren't being transferred, and Paolo is 23 confirming that the assets would not be 24 transferred because they're at Chase.</p> <p>25 Q. Okay. So, with that answer in mind,</p>	<p style="text-align: right;">Page 137</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 does this e-mail chain in your mind address any 3 issue concerning whether the racers would stay 4 in or not stay in the repo? 5 A. No. 6 (Exhibit 318, a document bearing Bates 7 Nos. 10325943 with attachment, marked for 8 identification, as of this date.) 9 Q. Mr. Kirk, I have put before you two 10 documents, one which we have marked as Exhibit 11 318, a one-page document bearing numbers 12 10325943. Withdrawn. 13 MR. KELLEY: On our copy the comment 14 at the far left is, on some pages, partially 15 blocked out. 16 MR. GAFFEY: I don't have a copy of it 17 yet. I see that. 18 MR. KELLEY: That's not a good 318. 19 MR. GAFFEY: Let me more clearly 20 describe it for the record. Exhibit 318 is 21 actually a multi-page document bearing 22 number 10325943, annexed to which is a 23 schedule which I agree, David, is miscopied 24 so that some of the numbers down the 25 left-hand side don't appear and there may</p>

<p style="text-align: right;">Page 138</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 actually be some numbers cut off at the 3 bottom, but I'm not going to ask any 4 questions about the specific numbers. 5 BY MR. GAFFEY: 6 Q. Have you seen Exhibit 318 before, 7 Mr. Kirk? 8 A. Yes. 9 Q. And what is the document? 10 A. This is a schedule of residential 11 mortgage positions available for sale. 12 Q. Is this one of the schedules that we 13 spoke about before the break that were prepared 14 for the -- in connection with the Friday, the 15 Friday project to see what assets could be 16 transferred to Barclays? 17 MR. HUME: Objection. Vague and 18 ambiguous. 19 A. I don't know if this was in particular 20 for that, but it appears to be so. 21 Q. Okay. Do you have a recollection of 22 seeing this document on that Friday, on the 23 19th, in connection with the work you were doing 24 that day? 25 A. I took a cursory review of it, as I</p>	<p style="text-align: right;">Page 139</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 recall. 3 Q. Would you take a look at what's 4 previously been marked as Exhibit 9, which is 5 also before you. Same question: Have you seen 6 the document before? 7 A. Yes. 8 Q. And what is the document? 9 A. This is a schedule of CDs and 10 short-term money market instruments that were 11 available for sale. 12 Q. And again, the same question: Did you 13 have this document, did you use this document in 14 connection with the work you were doing on 15 Friday, the 19th? 16 A. Yes. 17 Q. And for what purpose did you use it? 18 A. The same -- to be particular, I don't 19 know if this is the document that was produced 20 that was part of the 45 billion or it was a 21 schedule that related to the 70 billion or it 22 was something in between. I just don't know. 23 Q. Okay. 24 A. But all the documents that were 25 produced were an attempt to get to the</p>
<p style="text-align: right;">Page 140</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 equivalent of what actually could be sold to 3 Barclays, this would have been one of them, and 4 to be able to deliver to the experts to value 5 them. 6 Q. Okay. I may be retreading a little 7 bit a topic we addressed before the lunch break, 8 and forgive me for that, but I want to make sure 9 I have a clear understanding of your memory of 10 this. 11 In this work on Friday to find 12 additional assets, the 15c3 and the unencumbered 13 assets, I asked you that question about the 14 broad spectrum, you know, just go find 15 everything or go find a defined amount. 16 Was the formula that was used there, 17 in essence, keep finding assets until Barclays 18 says that's enough? 19 MR. HUME: Objection. Vague and 20 ambiguous. 21 A. Again, I didn't -- I wasn't party to 22 the discussion between Bart and Ian as to what 23 the specifics of that was. 24 (Exhibit 319, an e-mail chain, marked 25 for identification, as of this date.)</p>	<p style="text-align: right;">Page 141</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. You have before you, Mr. Kirk, a 3 two-page document that we have marked as Exhibit 4 319. Take a look through it. Let me know 5 whether you've seen the document before, please. 6 (Document review.) 7 A. Yes. 8 Q. And what's the document? Well, it 9 appears to be a set of e-mails sent to and fro 10 on the 19th of September. Do you recall seeing 11 these e-mails are dated? 12 A. Yes. 13 Q. And tell me what you remember about 14 the circumstances under which this is of 15 interest to you -- withdrawn. 16 Why is this chain of e-mails of 17 interest to you in the work you're doing on the 18 19th? 19 A. Well, this is 5:30 in the afternoon. 20 Everybody's left for court. Jim Seery asks me 21 if I'm coming down to the courthouse. That's 22 the first e-mail. I'm not planning on it. Do I 23 have to, i.e., do they need to be down there? 24 He replies no. We will be drinking later.</p>

<p style="text-align: right;">Page 142</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 I reply, "I'm here. I'm close to the 3 building. How long will you guys be down 4 there?" "Give you an idea after we start." 5 "Sounds like hours." "What is the value of 6 collateral Barclays posted to the DTC today?" I 7 answered, "I believe it's 45 and a half." 8 Billion would be the number, would be the big 9 number. "I don't know the marked value," 10 meaning I don't know what the change in the 11 value might have been between the marks on 12 Thursday night that they accepted and what -- 13 what had been attempted to agree to on Friday.</p> <p>14 Q. Okay. The 45.5, let me see if I can 15 put a little context to this. When you get this 16 last e-mail from Mr. Seery in this sequence, the 17 one with the time of 5:51 on the Friday?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Is it your understanding Mr. Seery is 20 down in court still?</p> <p>21 A. Yes.</p> <p>22 Q. And Seery is writing to you to ask 23 what the value of the collateral was that 24 Barclays posted to the DTC. What do you 25 understand Seery to mean when he's describing it</p>	<p style="text-align: right;">Page 143</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 as the collateral that Barclays posted to the 3 DTC? 4 A. The collateral that they would have 5 held in the DTC account at Bank of New York, 6 bank, you know, that they had taken over from 7 the Fed, the repo. 8 Q. Is that the collateral in the repo? 9 A. Yes. 10 Q. And you put the value in your response 11 at 45.5 billion, correct? 12 A. Yes. 13 Q. And you're distinguishing in your 14 response the difference between the marked value 15 and what kind of value? The actual value? The 16 fair value? 17 A. Whatever the stated value of the 18 transfer was, which Barclays had indicated all 19 day that they weren't sure what the actual value 20 of the collateral was, so that 45 was the stated 21 value versus, as I said, I didn't know what the 22 marked value or the market value was. 23 Q. Okay. Now -- 24 A. And it's probably meant to read 25 "market." I probably just mistyped it.</p>
<p style="text-align: right;">Page 144</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Now, the -- 3 I'm sorry, "marked," M-A-R-K-E-D, was 4 supposed to read "market," is that what you -- 5 A. Probably. 6 Q. So the value of 45.5 that you referred 7 to here may go to a question I asked you before 8 the break, which was whether or not you became 9 aware of the value that was put on the repo 10 collateral by Bank of New York? 11 A. I don't know if this is a number that 12 was quoted to me by Barclays and it was a number 13 they had at -- by Bank of New York or not. I 14 just don't recall. 15 Q. Do you have any recollection of what 16 your source was for the \$45 and a half billion 17 number in your e-mail? 18 MR. HUME: Objection. Asked and 19 answered. 20 A. I don't remember. 21 Q. Did you ever learn why it was that 22 Seery was asking you this question from the 23 courthouse? 24 MR. KELLEY: Objection. Speculation. 25 MR. HUME: Calls for speculation.</p>	<p style="text-align: right;">Page 145</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Objection. 3 Q. You can answer. 4 A. I assume there was a good reason he 5 needed it. I don't know what it was. 6 Q. Yeah, my question is a little 7 different. Did there come a time when you ever 8 knew, either at the time or later, why Seery 9 wanted to know this information from you? 10 A. No, because it was impossible to 11 communicate directly with him that evening. 12 There was -- I didn't have a phone. I didn't 13 have a conversation with him to have it 14 explained to me. 15 Q. He's in the courthouse so he can't use 16 his phone. 17 It doesn't matter. You can't speak to 18 him by telephone? 19 A. It's chaos. 20 Q. Now, did you ever learn, sir, what 21 value was described to the court of the deal as 22 it stood on Friday? 23 A. No. 24 (Exhibit 320, a document bearing Bates 25 Nos. 10293820, marked for identification, as</p>

<p style="text-align: right;">Page 146</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 of this date.) 3 Q. Mr. Kirk, you have before you what I 4 have marked as Exhibit 320, a two-page chain of 5 e-mails. Have you seen this document before? 6 A. I don't remember seeing this document, 7 no. 8 Q. Do you recall learning that -- have 9 you had a chance to look through the document? 10 Sorry. 11 A. I don't recall this. 12 Q. Okay. Do you recall any 13 conversation -- take a look at the chain of 14 e-mails. You see it ends, it discusses Barclays 15 closing out the repo with Lehman and taking all 16 of the assets collateral, asking, further up, 17 Jean-Francois Astier asks, "Is that part of the 18 plan?" You respond, "Call my cell." 19 Do you see that? 20 A. Right, uh-huh. 21 Q. Do you recall a conversation with him 22 about that topic? 23 A. I don't recall speaking to JF about 24 this specific topic. 25 Q. And JF is Mr. Astier?</p>	<p style="text-align: right;">Page 147</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. Jean-Francois Astier. 3 Q. And do you recall the topic coming up, 4 whether you remember speaking to JF about it or 5 not, the topic being Barclays taking all the 6 collateral in the repo? 7 A. Without being refreshed by this 8 e-mail, I didn't recall it. 9 Q. Does this e-mail refresh your 10 recollection as to whether or not the topic came 11 up? 12 A. Somewhat. 13 Q. What do you remember about it? 14 A. I think I remember knowing nothing 15 about this being part of the plan or discussed 16 prior to us going down to the courthouse. 17 Q. And when you say you remember nothing 18 about it being part of the plan, do you mean you 19 didn't know one way or the other, or you thought 20 it wasn't part of the plan? Or you thought it 21 wasn't part of the plan? 22 A. It was never discussed one way or 23 another. 24 Q. So your understanding was at the time 25 that Barclays was taking, correct me if I'm</p>
<p style="text-align: right;">Page 148</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 wrong, your understanding was at the time that 3 Barclays is taking both the collateral 4 reflecting the financing amount of the repo and 5 the haircut; is that correct? 6 A. I don't remember understanding what it 7 was exactly that they had done. 8 Q. Now, after writing back to JF, "Call 9 my cell," he writes back to you, "I don't 10 understand it either. Seery says it is okay. 11 He is walking out to call you." Do you see 12 that? 13 A. Yes. 14 Q. Now, I take it at 11:18 P.M. -- 15 actually, 7:18 P.M., with the adjustment for 16 Greenwich mean time, on the 19th of February, 17 Mr. Seery is still down in the courthouse, 18 correct? 19 A. Yeah, they're all down there. JF is 20 down there as well. 21 Q. And Seery can't use his phone to call 22 you from the courthouse, we've talked about 23 that, and he says, "Seery is walking out to call 24 you." Do you recall getting a phone call from 25 Mr. Seery that evening?</p>	<p style="text-align: right;">Page 149</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. Yes, but I don't recall what 3 specifically the discussion was. 4 Q. Do you recall anything about the 5 discussion? 6 A. No. 7 Q. But you do recall receiving a 8 telephone call from Mr. Seery? 9 A. Yes, vaguely. This is refreshing my 10 memory. He must have called me if he says he's 11 going to. 12 Q. Does it refresh your memory, as you 13 look further at the document, that you got a 14 call and somehow the topic was the repo? 15 A. If it was, it wouldn't have been more 16 beyond Jim just saying it's not a big deal, 17 don't worry about it. 18 Q. Jim saying it's -- that the issue, 19 that the issue's not a big deal, or the fact 20 that Barclays' taking the collateral is not a 21 big deal? 22 A. I think the issue, whatever that -- 23 which is Barclays taking collateral, so it's one 24 and the same. 25 Q. And after around that time, around</p>

1 HIGHLY CONFIDENTIAL - A. KIRK 2 7:18 P.M. on that Friday, did you have a 3 discussion with anyone else about Barclays 4 taking the collateral that was in the repo at 5 any point? 6 A. No. 7 Q. Did you talk to anybody about that 8 over the weekend? 9 A. No. 10 Q. Was there any conversation about that 11 when you and Mr. McDade were at Weil in 12 connection with preparing for the closing? 13 A. Not that I recall. 14 Q. Do you know if the issue of Barclays 15 taking the collateral in the repo was addressed 16 at the closing in any way? 17 A. I assume not, because if the 18 transaction was that they were -- well, I don't 19 remember is the better answer. I don't remember 20 that being discussed. 21 Q. And as you sit here today, you have no 22 recollection of you yourself engaging in a 23 conversation with anyone about Barclays taking 24 the collateral that was in the repo? 25 A. Except for a vague recollection that	Page 150 1 HIGHLY CONFIDENTIAL - A. KIRK 2 Jim would have called me about it. 3 Q. And just so I'm clear on that, because 4 you're gesturing at the document saying "Jim 5 would have," do you have a recollection -- 6 A. Yeah. 7 Q. -- or are you just inferring that from 8 the document? 9 A. It's vague. I don't recall the 10 specific conversation. 11 Q. Okay. 12 A. But if it had been an issue, I'm sure 13 I would remember it. 14 Q. Okay. 15 A. Since it wasn't. 16 Q. And from the discussions on Friday, it 17 was your understanding that if Barclays got -- 18 if this value collection effort gave Barclays 19 enough value to support the financing in the 20 repo, that Lehman would get the excess back, 21 right? 22 MR. HUME: Objection. 23 Mischaracterizes the testimony. 24 A. I don't -- 25 MR. KELLEY: Do you want the question
1 HIGHLY CONFIDENTIAL - A. KIRK 2 read back? 3 THE WITNESS: Yeah, why don't you read 4 the question back, please. I'm not quite 5 sure exactly... 6 (Record read.) 7 MR. HUME: Same objection. 8 A. No, that discussion never took place. 9 There was too much uncertainty about the values. 10 Q. Was there, in connection with this 11 value of additional profit we talked about on 12 Friday, was there any discussion about what it 13 would take to get Barclays up to the value of 14 the financing in the repo? 15 A. Not that I was present at. I don't 16 know if there were any away from me. 17 Q. This sort of goes to a few other 18 questions I have asked you about, whether there 19 was a goal or a cap on how much had to be 20 collected on Friday. 21 Without regard to what the number may 22 or may not have been, was the goal to find 23 enough assets to replace the loss in value 24 within the repo? 25 MR. HUME: Objection. Vague and	Page 152 1 HIGHLY CONFIDENTIAL - A. KIRK 2 ambiguous and lack of foundation. 3 A. In the end, I was the witness to an 4 agreement that was agreed to between Bart and 5 Ian and the Barclays team, but I wasn't part of 6 any discussions as to the basis for that 7 agreement. 8 Q. And the agreement that you were a 9 witness to is the one you described to me before 10 where they said, do we have a deal? 11 A. Yes. 12 Q. And the agreement was we have a deal. 13 (Exhibit 321, a document bearing Bates 14 Nos. AK-LB-BANKR00002 through 27, marked for 15 identification, as of this date.) 16 Q. Mr. Kirk, I have put before you a 17 document bearing Bates number AK-LB-BANKR00002 18 through 27. Do you recognize the document? 19 A. Yes. 20 Q. What is it? 21 A. It's a notebook. 22 Q. Is it your notebook? 23 A. Yes, my notebook. 24 Q. Is it in your handwriting? 25 A. Yes.

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1 HIGHLY CONFIDENTIAL - A. KIRK	1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. During the course of your work in	2 at your notes, Mr. Kirk, when you took these
3 connection with the Barclays matter, did you	3 notes?
4 carry the same notebook from place to place?	4 A. Some of them, yes.
5 What was your habit with respect to taking	5 Q. Let's just take a minute. I don't
6 notes?	6 want you to go through every page, but tell me
7 MR. KELLEY: Objection. Do you	7 how you're dating it because there's no dates on
8 understand the "Barclays matter."	8 any of the pages.
9 THE WITNESS: What?	9 A. This looks like it would have been
10 Q. Withdrawn. Did you take these notes	10 Friday, the 12th, first page.
11 during the week of the 15th to the 22nd that	11 Q. Okay. And you're making that
12 we've been talking about today?	12 inference from the kind of notes you have here
13 A. From the 11th or -- 10th or 11th to	13 that's what was being discussed then?
14 the -- yeah.	14 A. That's correct.
15 Q. Okay. Some of these notes may go back	15 Q. Could you go, if you don't mind, maybe
16 to the period before the weekend?	16 we can save you some time, if you would go
17 A. Yes.	17 through the notes and tell me at what point they
18 Q. Is that what you're telling me?	18 pick up, if at all, on the events that begin on
19 A. Yes.	19 the Sunday night, the 15th. I meant Sunday, the
20 MR. HUME: May I ask a question? Were	20 14th, I'm told.
21 these notes produced to Barclays by anyone.	21 (Document review.)
22 MR. GAFFEY: I have no idea. They	22 A. Page 14.
23 were produced by the witness pursuant to the	23 Q. Okay. And just so I can put it in
24 subpoena.	24 some kind of context, what is it about page 14
25 Q. Are you able to tell me from looking	25 that tells you this picks up on the night of
Page 156	Page 157
1 HIGHLY CONFIDENTIAL - A. KIRK	1 HIGHLY CONFIDENTIAL - A. KIRK
2 Sunday, the 14th?	2 Hold on. That goes through the 18. Yeah, I
3 A. Because this is dealing with issues	3 think that's through 18. Those are all notes
4 that we might have -- hold on one second. Hold	4 from the meeting with the Fed and the Treasury
5 on. I apologize. I'm wrong. Sorry. Hold on.	5 representatives between 4 and 7 o'clock Sunday.
6 14 I'm not sure about. That may	6 Q. Okay. Now, are the notes sequential
7 actually still have to do with the morning of	7 after that? Can I -- I'm trying to get a course
8 attempting to get the Barclays deal done and how	8 of dealing here. Can I kind of work on the
9 we would deal with that with Spinco. This	9 assumption that we're at Sunday or after as I go
10 reference to Shafron is what makes me think that	10 through the rest of these notes?
11 it is because Steve was the point on Treasury	11 I note that it's a spiral notebook,
12 with us. He works for Treasury.	12 and that's one of the reasons I'm asking that
13 Q. So once I see Steve Shafir's name at	13 question. Are you writing as you go?
14 page --	14 A. I don't know that these are all in the
15 A. Shafron.	15 same order, but let me just look. Sometimes you
16 Q. Shafron, I see.	16 end up inadvertently skipping a page.
17 A. Right. That indicates I'm still	17 Yeah, these are -- these next through
18 trapped at the Fed. Okay? There's notes here	18 23 are --
19 with the reference to tri-party repo labeled	19 Q. Okay.
20 number 1 on page 16 is during our discussions	20 A. -- sequential.
21 with the Fed, and the following pages prior to	21 Q. Can we go to 23, please?
22 filing but when they were encouraging us to	22 A. Yes.
23 file.	23 Q. There's a list of what appear to be
24 Q. Now, if you would turn to page --	24 names on there, Chambers, Orlan, Assi, Seery, do
25 A. So that's during that period of time.	25 you see that?

<p style="text-align: right;">Page 158</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Yes.</p> <p>3 Q. Anything to add? Any knowledge as to</p> <p>4 why you're listing those eight names there?</p> <p>5 A. I don't recall specifically. Some of</p> <p>6 these people I'm responsible for, some of them</p> <p>7 I'm not, so I don't recall exactly what this</p> <p>8 list was -- why it's there. This would have</p> <p>9 been during the week, early in the week of the</p> <p>10 15th.</p> <p>11 Q. And if you would turn to starting at</p> <p>12 page 24, it's the following four pages are --</p> <p>13 following three pages are a typewritten balance</p> <p>14 sheet of some kind.</p> <p>15 Are we in the same place?</p> <p>16 A. Yes.</p> <p>17 Q. And it's entitled Funding 2008 Q3</p> <p>18 Balance Sheet?</p> <p>19 A. This was a schedule which was faxed to</p> <p>20 Bart Saturday morning at the Fed that he and I</p> <p>21 used to prepare for a meeting with John Mack,</p> <p>22 Vickram Pandit, John Thayne and their associates</p> <p>23 to discuss the possible iterations of Lehman</p> <p>24 Brothers going forward. This was those -- that</p> <p>25 was the first -- well, that's the first pages of</p>	<p style="text-align: right;">Page 159</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 funding.</p> <p>3 This second page is a -- is an</p> <p>4 analysis that B of A did marking down our assets</p> <p>5 earlier in the week, which we also discussed at</p> <p>6 that meeting. B of A's valuation of Lehman</p> <p>7 Brothers' assets.</p> <p>8 Q. You can put that aside. I'm done with</p> <p>9 that document.</p> <p>10 A. Okay.</p> <p>11 (Exhibit 322, a document bearing Bates</p> <p>12 Nos. AK-LB-BANKR000028, marked for</p> <p>13 identification, as of this date.)</p> <p>14 Q. Before you, Mr. Kirk, is Exhibit 322,</p> <p>15 a one-page set of notes bearing Bates number</p> <p>16 AK-LB-BANKR000028. Is that your handwriting?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have any recollection of making</p> <p>19 these notes?</p> <p>20 A. Yeah, this was somebody trying to</p> <p>21 explain to me in broad terms what 15c3-3 was.</p> <p>22 Q. Okay. I take it you're looking at the</p> <p>23 reference to customer accounts segregated in</p> <p>24 margin in the box in the upper left-hand corner.</p> <p>25 A. I'm looking at the whole page, yes.</p>
<p style="text-align: right;">Page 160</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Do you know, these numbers on the</p> <p>3 right-hand side, 1B and 1.7B, what do they</p> <p>4 represent?</p> <p>5 A. I don't recall what they represent.</p> <p>6 (Exhibit 323, a document bearing Bates</p> <p>7 Nos. AK-LB-BANKR000030, marked for</p> <p>8 identification, as of this date.)</p> <p>9 Q. You have before you, Mr. Kirk, what we</p> <p>10 have marked as Exhibit 323, bearing Bates number</p> <p>11 AK-LB-BANKR000030. Are these notes in your</p> <p>12 handwriting?</p> <p>13 A. Yes.</p> <p>14 Q. Can you, as you look at them, do you</p> <p>15 remember the circumstances under which you took</p> <p>16 the notes?</p> <p>17 A. I think these were notes on Sunday</p> <p>18 during the closing.</p> <p>19 Q. And why is it you think they're notes</p> <p>20 on Sunday during the closing?</p> <p>21 A. Because I see a reference to Alastair,</p> <p>22 which would be Alastair Blackwell, who I didn't</p> <p>23 deal with prior to Sunday, and Tom Hamilton, who</p> <p>24 was head of mortgage trading at Barclays, who</p> <p>25 was trying to deal with this issue of the</p>	<p style="text-align: right;">Page 161</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 settlements.</p> <p>3 The dispute that arose on Sunday was</p> <p>4 who was going to guarantee the settlements of</p> <p>5 the trades that were supposed to settlement on</p> <p>6 Lehman Brothers' account starting Monday</p> <p>7 inorning.</p> <p>8 Q. And that dispute, broadly speaking,</p> <p>9 involved DTC needing some comfort as to who was</p> <p>10 going to guarantee those settlements?</p> <p>11 A. Yes.</p> <p>12 Q. Now, on the notes themselves there is,</p> <p>13 amidst the names and above the name Tom Hamilton</p> <p>14 and Harry Harnson -- I'm just giving you that</p> <p>15 for placement on the document.</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- is what appears to be an Assets and</p> <p>18 Liabilities column; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Can you explain to me what that</p> <p>21 represents?</p> <p>22 A. To the extent that I understand it, it</p> <p>23 represents some assets of 45 and a half billion,</p> <p>24 goodwill would be the next line of 250 million,</p> <p>25 and then it had a loan from BarCap that says 45</p>

<p style="text-align: right;">Page 162</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 and a half, and then payables or trade payables, 3 or whatever they are, cure payments and comp of 4 2 and a quarter and 2 billion on it.</p> <p>5 Q. Is that your understanding of the 6 balance sheet of the deal that was agreed on 7 Friday?</p> <p>8 MR. HUME: Objection. Lacks 9 foundation.</p> <p>10 A. I don't remember if this was -- this 11 was probably more a broad generalization than a 12 specific.</p> <p>13 Q. I recognize it's some handwritten 14 notes and it's got scratches all over it, sir. 15 I'm not giving it any greater dignity than that, 16 but my question is, really goes to the 45.5 on 17 the asset side and the 45.5 on the liability 18 side.</p> <p>19 A. I don't remember for this specific 20 document and why I was scratching this out that 21 way.</p> <p>22 Q. You do see on the liability side the 23 amount for payables at 2.25 billion, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the amount for comp at 2 billion,</p>	<p style="text-align: right;">Page 163</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 correct? 3 A. Yes. 4 Q. And those were the assumed liabilities 5 that had stayed in the deal from the first time 6 you saw it, right? 7 A. This would have been -- yes, but I 8 don't know, I don't recall anybody warranting to 9 me what all these numbers were or if I was just 10 scratching them down from a press release or... 11 Q. Actually, I should ask you that. Do 12 you recall the source? Is this something you're 13 reading? Something somebody is saying? 14 A. I don't recall whether this was 15 something somebody was saying or if I was 16 reading a press release or a, you know, a 17 newspaper account or something. 18 Q. Do you have any understanding with the 19 repo in mind of whether the agreement made on 20 Friday was that Barclays would get 45.5 out of 21 the repo -- 22 MR. HUME: Objection. 23 MR. GAFFEY: You got to wait until I'm 24 done, Hamish. 25 MR. HUME: I thought you were.</p>
<p style="text-align: right;">Page 164</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. Do you have any understanding with the 3 repo in mind of whether the agreement made on 4 Friday was that Barclays would get 45.5 out of 5 the repo in return for 45.5 in funding? 6 MR. HUME: Objection. Lack of 7 foundation. 8 A. I'm not sure, actually. They had 9 funded the firm for that amount on Thursday, so 10 I -- 11 Q. I see the problem. Let me rephrase 12 the question. You understood that Barclays had 13 funded the firm for 45.5 the prior Thursday, 14 correct? 15 A. Thursday or Friday, right. 16 Q. Okay. And on the Friday, you 17 understood that the deal had changed so that the 18 collateral in the repo was what would be 19 transferred to Barclays, correct? 20 A. Correct. 21 Q. Did these notes reflect your 22 understanding that what would be transferred to 23 Barclays was the amount in the repo sufficient 24 to cover the amount they had funded? 25 MR. HUME: Objection.</p>	<p style="text-align: right;">Page 165</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. They were supposed to balance? 3 MR. HUME: Objection. Vague and 4 ambiguous as to what the values they had 5 funded. 6 Q. Do you have the question in mind? Do 7 you want it read? 8 A. No. No, I understand the question. 9 I'm just saying there were lots of moving parts, 10 so I don't know that those were exactly supposed 11 to balance in that. 12 Q. Was it your understanding they were 13 roughly supposed to balance? 14 MR. HUME: Objection. Vague and 15 ambiguous. 16 A. Again, I don't -- I didn't have an 17 understanding of that. I didn't know how much 18 would be made up from the shortfall of other 19 assets versus the repo. Once they went to 20 court, I wasn't dealing with valuation issues, 21 so ... 22 Q. Apart from the source of assets to be 23 given to Barclays, was it your understanding 24 that what was to be given to Barclays was to be 25 equal to the amount that Barclays had funded?</p>

<p style="text-align: right;">Page 166</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 MR. HUME: Objection. 3 MR. KELLEY: Objection. Speculation. 4 Misstates prior answers. 5 MR. HUME: Vague and ambiguous as to 6 valuation. 7 A. I didn't have that understanding. 8 Q. Did you have -- 9 A. Nowhere did anybody say they should be 10 equal. 11 Q. Okay. Did you have an understanding 12 that Barclays was going to get more than it had 13 funded? 14 A. In terms of assets? 15 Q. Yes. 16 A. Yeah, they were going to get assets 17 that were unencumbered. 18 Q. And when you added the unencumbered to 19 the amount in the repo, was it your 20 understanding that Barclays was going to take 21 more out than it had funded into the repo? 22 A. Well, they were also assuming other 23 liabilities away from the repo. 24 Q. I understand that. 25 Did you understand they were going to</p>	<p style="text-align: right;">Page 167</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 take out more than they had funded into the 3 repo? 4 MR. KELLEY: Objection. That's based 5 on speculation. Calls for speculation, I 6 should say. 7 THE WITNESS: So I -- 8 Q. You can answer that question. 9 MR. KELLEY: It just asks him to 10 identify the source of his knowledge. 11 MR. GAFFEY: No, I'm going to ask him 12 to answer the question I asked. 13 Will you read it back? 14 (Record read.) 15 A. I don't understand the nature of, when 16 you say "take out more," what does that mean? 17 Q. Barclays funds the repo to the tune of 18 \$45.5 billion, you understand that, right? 19 A. Right. 20 Q. In the asset transfer agreement that's 21 at issue for the bankruptcy court, Barclays is 22 going to take a certain amount of assets out of 23 Lehman, correct? 24 A. Yes. 25 Q. Was it your understanding that that</p>
<p style="text-align: right;">Page 168</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 latter bucket of assets was to equal or to 3 exceed the amount that Barclays had paid into 4 the repo for funding? 5 MR. HUME: Again, objection. Vague 6 and ambiguous as to the valuations posed in 7 your question. 8 A. My understanding was the totality of 9 the assets should attempt to get somewhere close 10 to covering all the liabilities. 11 Q. The liabilities, you mean the 12 liabilities in the repo plus the assumed 13 liabilities? 14 A. Yes. 15 Q. Is that what you mean? 16 MR. HUME: Objection to the phrase 17 "assumed liabilities." 18 A. Yes. 19 Q. And the assumed liabilities you're 20 referring to are the assumed liabilities for 21 payable and comp in the amount of 4.25 billion, 22 correct? 23 A. Correct, and then ultimately the 24 assumed liabilities in guaranteeing the trading 25 obligations which they were agreed to do come</p>	<p style="text-align: right;">Page 169</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Sunday. 3 Q. Okay. And do you know what the 4 resolution was of the issue of guaranteeing -- 5 the dollar resolution was of the guarantee of 6 the trading liabilities? 7 A. I don't recall specifically, but they 8 agreed to I think fund into DTC some amount of 9 cash to make good on the liabilities. I don't 10 remember what the number was. 11 Q. Do you recall that the number was 12 about \$250 million? 13 A. Sounds reasonable. 14 Q. Okay. So Barclays is to take out of 15 the deal an amount roughly in balance to the 16 amount in the repo, the assumed liability for 17 comp, the assumed liability for payables, and 18 the guarantee to the DTC; is that your 19 understanding? 20 MR. HUME: Object to the form of the 21 question. 22 A. And the goodwill. 23 Q. And the goodwill. And the goodwill is 24 about 250 million, correct? 25 A. Right, so that -- well, they were</p>

<p style="text-align: right;">Page 170</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 buying the business of Lehman Brothers and they 3 were buying a whole bunch of assets which had, 4 in my opinion, quite uncertain value so that 5 they could lose many billions of dollars or make 6 many billions of dollars on those assets given 7 the volatility of the markets, and in addition 8 to that, they would obviously get the ongoing 9 operations of Lehman Brothers.</p> <p>10 Q. Was it your understanding that -- 11 A. So that it was -- 12 Q. Sorry. 13 A. What I would say is that, in my 14 opinion, there was, at least from my seat, no 15 way to know what the actual value of those 16 assets would end up being for Barclays, you 17 know, over -- because I had no idea what 18 strategies they were going to pursue about those 19 assets, whether they were going to hedge them, 20 you know, all the variety of things that they 21 might end up choosing to do to execute a large, 22 huge block of -- the size of a transfer of this 23 size of assets is, you know, enormous and at the 24 time maybe even unprecedented.</p> <p>25 Q. Was it your understanding that the</p>	<p style="text-align: right;">Page 171</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 transaction was supposed to give Barclays a gain 3 on day one? 4 A. No. 5 Q. I hear what you're saying about longer 6 term they may operate the business and make 7 money out of it. The question about day one, I 8 want to be sure we're -- 9 A. Yeah. 10 Q. -- hearing each other here. Was it 11 your understanding that there was any immediate 12 gain embedded for Barclays in the deal that was 13 made on Friday? 14 MR. HUME: Objection. Lacks 15 foundation. 16 A. No, there was no understanding on my 17 part that there was a gain. 18 (Recess; Time Noted: 2:10 P.M.) 19 (Time Noted: 3:15 P.M.) 20 (Exhibit 324, a document bearing Bates 21 Nos. AK-LB-BANKR0000987 through 119, marked 22 for identification, as of this date.) 23 BY MR. GAFFEY: 24 Q. Mr. Kirk, you have before you what we 25 have marked as Exhibit 324, a document bearing</p>
<p style="text-align: right;">Page 172</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Bates number AK-LB-BANKR000097 through 119. Do 3 you recognize the document? 4 A. Yes. 5 Q. What is the document? 6 A. This is a document that describes the 7 deal that was cut early in the week between 8 Lehman and Barclays. 9 Q. Is that your handwriting on the 10 document? 11 A. No. 12 Q. Do you know whose handwriting it is on 13 the document? 14 A. No. 15 Q. I would note that the document was 16 produced to us by you. Do you know how you came 17 into possession of this document with somebody 18 else's handwriting on it? Any memory? 19 A. No, I don't know what this is. 20 Q. Do you have any knowledge of what the 21 annotations mean on the asset side where 22 somebody has written "ACT" and "HC"?</p> <p>23 A. No. 24 Q. Would you understand the phrase "HC" 25 to mean haircut?</p>	<p style="text-align: right;">Page 173</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. That could be. 3 Q. Would you understand the phrase "ACT" 4 to mean actual? 5 A. That's not usually a vernacular, but 6 maybe. 7 Q. I asked you -- 8 A. It could be "account." 9 Q. Could be. I don't know what your -- 10 A. Yeah. Yeah. 11 Q. I asked you earlier this morning if 12 you had any knowledge of a discount or a haircut 13 being given to Barclays on the book value of the 14 assets being traded for in the early part of the 15 week. Does this refresh your recollection as to 16 whether there was an agreement on the deal as it 17 originally was made on Monday and Tuesday to 18 give Barclays a discount from book value? 19 A. No. 20 Q. Could you put before you Exhibit 19? 21 It's within the pile. 22 A. What does it look like? 23 Q. It's the other copy of that financial 24 statement, the one-pager. 25 A. Yeah.</p>

<p style="text-align: right;">Page 174</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. I'm just going to take a fly around 3 this just because I wonder if you know.</p> <p>4 This document, if you compare it to 5 Exhibit 19, that is, Exhibit 324 is identical to 6 Exhibit 19, except for two things: One is the 7 handwritten note in the upper right-hand corner 8 in 19 and the other is the time stamp in the 9 lower right-hand corner.</p> <p>10 You see one is generated 11:18 and one 11 is generated at 11:19?</p> <p>12 A. Okay.</p> <p>13 Q. Do you have any knowledge of how this 14 schedule was being generated or who was 15 generating it?</p> <p>16 A. No, I don't even know why I had this 17 document. Whatever documents I had I gave to 18 David, he gave to you.</p> <p>19 Q. Okay. I have nothing further at this 20 time.</p> <p>21 Oh, sorry, I lied. I have one more. 22 (Exhibit 325, a document bearing Bates 23 Nos. AK-LB-BANKR000188, marked for 24 identification, as of this date.)</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 175</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Before you, Mr. Kirk, is a one-page 3 document from amongst the documents that you 4 produced, and its number is AK-LB-BANKR0000188.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Do you recognize the document?</p> <p>7 A. Yes.</p> <p>8 Q. And the first e-mail in the series, 9 the earlier one, is from you saying, "Today is 10 my last day at BarCap/Lehman. I want to thank 11 everyone for all their help over the years," and 12 you give your contact information, do you see 13 that?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And the next e-mail up is a response 16 from Mr. McGee to you, do you see that?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Where he says, "You are a talent and a 19 good guy. You were amazing through the final 20 months. I am sorry we didn't pull it off. Best 21 of luck." Do you see that?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Do you know what Mr. McGee was 24 referring to when he said, "I'm sorry we didn't 25 pull it off"?</p>
<p style="text-align: right;">Page 176</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Meaning that Lehman didn't survive and 3 thrive as an independent entity.</p> <p>4 MR. GAFFEY: Okay. Now I have nothing 5 further. Thanks.</p> <p>6 I have to pass you down to my friends.</p> <p>7 EXAMINATION BY</p> <p>8 MR. ROTHMAN:</p> <p>9 Q. Good afternoon. My name is Seth 10 Rothman. We met earlier. I represent the 11 trustee who's been appointed under the SIPA 12 statute to liquidate LBI.</p> <p>13 A. Okay.</p> <p>14 Q. If you would dig out of the pile of 15 exhibits in front of you number 322. These are 16 your handwritten notes, correct?</p> <p>17 A. Yes.</p> <p>18 Q. In the upper left-hand corner at the 19 top of the page, there's a box that's divided in 20 two. It says "Customer Account Seg" in the top?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Correct? And then underneath it says 23 "Margin." Can you tell me what that represents?</p> <p>24 A. Okay. My recollection was somebody 25 was trying to explain to me how the 15c3 margin</p>	<p style="text-align: right;">Page 177</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 worked, and it was, my recollection from 3 reviewing this document, it was different than 4 between high-net worth individuals and Neuberger 5 Berman, so that's why there's four boxes instead 6 of two.</p> <p>7 I don't remember the distinct 8 difference, but the customer accounts, the 9 individual customer accounts in the 10 high-net-worth business were held in individual 11 accounts. In each of them there was some margin 12 that Lehman had to support those accounts. It 13 was regulatory -- required by regulation.</p> <p>14 Q. Are you familiar with the concept of a 15 margin deposit to cover short positions?</p> <p>16 A. I'm familiar with that concept.</p> <p>17 Q. Is that what you were referring to 18 here when you write margin?</p> <p>19 A. I don't know if it was that or if 20 there were other margin requirements that were 21 required by the regulators. I don't know if it 22 was specifically that or if it was overall 23 margin or if the margin is not required on 24 others.</p> <p>25 Q. Over on the right it looks like you</p>

<p style="text-align: center;">Page 178</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 wrote 500, is that million? 3 A. It looks like that, yeah. 4 Q. Do you know if that relates to the 5 margin box on the left? 6 A. It appears to, but none of these 7 numbers add up in those columns over there, so 8 I'm not sure what it refers to exactly. 9 Q. Do you recall any discussions 10 concerning the margin deposit that LBI had with 11 the OCC? 12 A. With the? 13 Q. OCC. 14 A. Who's that? What's that? The office 15 of -- 16 Q. The Options Clearing -- 17 A. Oh, no. 18 Q. -- Corp. 19 A. Those typically would have been equity 20 options positions. I assume would have been 21 mostly equity, so it was not my bailiwick. I 22 was not involved in that. 23 Q. In your work on the transaction, did 24 you hear any discussions about whether margin 25 deposits would be transferred to Barclays?</p>	<p style="text-align: center;">Page 179</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. I don't recall. 3 Q. You can put that aside. 4 A. Okay. 5 Q. And you mentioned that there was a 6 dispute involving the DTC. Do you recall that? 7 A. Yes. 8 Q. That arose on Sunday while you were up 9 at Weil? 10 A. Yes. 11 Q. When did you become aware of that 12 dispute? At what point during the day? 13 A. It would have been somewhere, sometime 14 between 10 and 2, 10 A.M. and 2 P.M. 15 Q. And how did you become aware of that? 16 A. I don't recall who told us it was an 17 issue, but someone informed Bart and I in the 18 room that there was an issue with the 19 settlements and those obligations going forward. 20 Q. So you yourself weren't involved or 21 participating directly in any of those 22 discussions? 23 A. We were informed there was an issue. 24 We were informed that it -- a big piece of the 25 issue had to do with TBAs, mortgage trades, and</p>
<p style="text-align: center;">Page 180</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 government securities in terms of what was 3 settling. 4 So I was involved only to the extent 5 that I tracked down through Kaushik Amin and 6 Jeff Michaels, who ran agency and government 7 bond trading, to get him in touch with the 8 mortgage people at Barclays to explain to them 9 how what the market risk in those positions and 10 settlement risk in those positions would be. 11 So I set up a call. I reached Jeff 12 Michaels on the phone, I tracked him down, and 13 then I got him to speak to the Barclays 14 representatives by phone. I didn't participate 15 in those conversations. 16 Q. Who is Jeff Michaels? 17 A. Head of government agency trading at 18 Lehman Brothers in the U.S. -- globally, I 19 think. 20 Q. You also mentioned in response to 21 Mr. Gaffey's questions a guarantee relating to 22 this issue. 23 A. We were informed that the issue had 24 been settled later in the day along with there 25 was a, what I referred to as a global settlement</p>	<p style="text-align: center;">Page 181</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 between JPMorgan and Barclays. We were not 3 given details, but I do recall one detail we 4 were given was that they had agreed to guarantee 5 the trades. They had gotten enough information 6 and the DTC was comfortable to settle trades the 7 next day. We couldn't open for business with 8 this cash deposit. 9 Q. When you say they had agreed to 10 guarantee the trade? 11 A. Barclays. 12 Q. And did you understand the guarantee 13 to be \$250 million or -- 14 A. I don't know if -- I remember the 15 amount, that amount being discussed as being put 16 as a deposit. I don't remember if there were 17 additional parts of the guarantee that were 18 described beyond that. There might have been. 19 Q. Did you hear that there was a concern, 20 any concern on the part of the DTC that it might 21 be exposed if the trades didn't settle? 22 A. I remember that being discussed at 23 some point in the day as the reason as to why 24 all the DTC trades had failed on Friday, and DTC 25 was concerned that if they reopened, they would</p>

<p style="text-align: right;">Page 182</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 be assuming all kinds of risks from failed 3 trades on Friday and in addition to the trades 4 going forward on Monday, and that they wanted 5 some -- they needed a margin safety to be able 6 to do that. So they were concerned that they 7 were exposed.</p> <p>8 Q. And did you hear anything about the 9 extent of that exposure?</p> <p>10 A. No.</p> <p>11 Q. Do you know if the deposit or the 12 guarantee was meant to cover the entire 13 potential exposure?</p> <p>14 A. I don't know the answer to that. 15 Those discussions happened directly, that is, my 16 understanding those discussions happened 17 directly between DTC and Barclays.</p> <p>18 Q. Do you know if there was a written 19 agreement?</p> <p>20 A. I don't know that.</p> <p>21 Q. You never saw a written agreement 22 resolving this dispute with the DTC?</p> <p>23 A. No. No.</p> <p>24 Q. Did you hear anything about what would 25 happen to the guarantee if it turned out not to</p>	<p style="text-align: right;">Page 183</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 be used?</p> <p>3 A. No.</p> <p>4 Q. Changing the subject. You mentioned 5 back on September 14 that Mr. McDade told you 6 that the first transaction that was being 7 discussed with Barclays wasn't going to go 8 forward. Do you remember that?</p> <p>9 A. Yes.</p> <p>10 Q. And I think you said he told you that 11 the FSA had turned down the application to close 12 that transaction?</p> <p>13 A. Yes.</p> <p>14 Q. Did he tell you why?</p> <p>15 A. Yes, that Barclays needed a waiver to 16 guarantee the trading obligations -- I'm sorry, 17 Barclays -- for Lehman to -- for them to close 18 the transaction, they would have to get a 19 shareholder vote, which would take some period 20 of time, I forget if it was 30 or 45 days, but 21 some reasonable period of time, and that it was 22 the view of all the participants, including 23 Treasury and the Fed and everybody, that Lehman 24 would not make it for 30 days without somebody 25 else guaranteeing the trading obligations for</p>
<p style="text-align: right;">Page 184</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 that period of time. 3 The only person who would do that was 4 Barclays. Barclays apparently needed a waiver 5 of shareholder approval to make that guarantee, 6 which the FSA deemed they would not give.</p> <p>7 Q. Okay. Let me now switch topics again 8 and take you back to the Friday meeting that you 9 testified that I think you said started around 3 10 o'clock on Friday afternoon?</p> <p>11 A. Uh-huh.</p> <p>12 Q. This is the meeting that you had with, 13 among others, Mr. Klein, Mr. Diamond and 14 Mr. Keegan from Barclays?</p> <p>15 A. Uh-huh.</p> <p>16 Q. You have to give me an out-loud 17 answer --</p> <p>18 A. Yes.</p> <p>19 Q. -- for the court reporter. Thanks.</p> <p>20 Was Mr. McDade physically present in 21 that meeting or is he on the phone?</p> <p>22 A. He's on the phone.</p> <p>23 Q. And were there any discussions about 24 that during that meeting about having to go back 25 and explain the deal to the Barclays board?</p>	<p style="text-align: right;">Page 185</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. No, not in that meeting.</p> <p>3 Q. Did you hear that at another meeting?</p> <p>4 A. No, I didn't hear it in any meeting.</p> <p>5 Q. When you say no, you don't think it 6 happened or you don't remember?</p> <p>7 A. No, I didn't hear it. Didn't 8 happen -- that was not discussed in front of me. 9 This was what day again? This was the 10 19th?</p> <p>11 Q. On Friday, the 19th.</p> <p>12 A. Friday, yes, no.</p> <p>13 Q. You had a meeting --</p> <p>14 A. Yeah.</p> <p>15 Q. -- late in the afternoon where -- this 16 is late in the afternoon where I think you said 17 this is when Barclays came back and said they 18 thought the value of the securities didn't match 19 the value of the loan and so they were looking 20 for additional unencumbered assets?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Is that right?</p> <p>23 A. Yes.</p> <p>24 Q. And Mr. Gaffey asked you a couple of 25 times about whether they gave a target or a</p>

<p style="text-align: right;">Page 186</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 number for how much more they would need? 3 A. Yes. 4 Q. Right? 5 As best you can recall, they didn't 6 give you such a number, correct; is that right? 7 A. That's correct. 8 Q. And nobody -- Mr. Klein didn't say 9 anything about having to have a certain number 10 to go back to the Barclays board? 11 A. No. 12 Q. I'm going to mark as my only exhibit 13 as 326 an e-mail from you to Mr. McDade. 14 (Exhibit 326, an e-mail chain, marked 15 for identification, as of this date.) 16 A. Right. 17 Q. Do you recall sending this e-mail to 18 Mr. McDade? 19 A. I do recall that. 20 Q. So the bottom e-mail on the page is 21 from you to Mr. McDade. It's sent on that 22 Friday at 3:39. 23 A. Uh-huh. 24 Q. Do you see that? 25 A. Yes.</p>	<p style="text-align: right;">Page 187</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Q. You write to Mr. McDade, "Rich Ricci 3 just told me he won't blow up this trade by 4 being a pig." 5 Do you recall the context for that? 6 A. Well, the Barclays team had left. 7 Bart was on the road and he was having 8 discussions with Ian about whatever additional 9 assets there were. You know, I implored to 10 these guys that they shouldn't blow this deal 11 up, 10,000 jobs were at stake, you know, there 12 was a tremendous amount of pressure on all of 13 us, and Rich said to me something to this 14 effect: I won't blow the deal up by being too 15 piggish. 16 I wanted to make sure Bart knew that 17 because they were wrapping up with he and Ian 18 whatever issues there were, so that's why I sent 19 the e-mail. 20 Q. Was there a concern on the Lehman said 21 that the Barclays people were being too piggish? 22 A. I was concerned that we were going to 23 go into bankruptcy court, which there's always 24 uncertainty, and try to describe a deal that 25 didn't look like the deal that they had heard</p>
<p style="text-align: right;">Page 188</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 about two days before. 3 So my primary concern at that point 4 was that there be as much flexibility, so to 5 speak, at least give the -- enough operating 6 room that we wouldn't go into court, have the 7 transaction denied, and have to put the padlocks 8 on the building Saturday morning. 9 So -- and I've been around many, many 10 bankruptcy cases over two decades. Wildly 11 uncertain things happen in these courts in 12 circumstances. 13 Q. Sorry. Is that what you meant by 14 "blow up the trade"?</p> <p>15 A. Yes. 16 Q. That the bankruptcy court wouldn't 17 approve the deal?</p> <p>18 A. That's correct. 19 Q. And you were, just so I understand 20 your testimony, you were concerned that that 21 might happen if Barclays was too piggish?</p> <p>22 A. Yeah, I think there were a myriad of 23 risks that could have done, you know, I mean, 24 the -- the stress of that not happening that 25 evening and you only had one shot at it, you</p>	<p style="text-align: right;">Page 189</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 know, it was -- certainly everybody was very 3 concerned that this was sort of a do-or-die 4 situation, literally. 5 Q. Was the comment about being a pig 6 related to the effort to find unencumbered 7 assets? 8 A. Yes. 9 Q. And you didn't -- so you don't have, 10 since that's in Mr. Lowitt's bailiwick, you 11 don't have a specific number or value that 12 would -- 13 A. No, this comment had been made to me. 14 I just wanted to pass it along. 15 Q. And then Mr. McDade asks you back, 16 "Are the shorts all gone?" What was that a 17 reference to? Did you have an understanding as 18 to what he meant? 19 A. I don't recall specifically why he 20 asked that, but that was a problem we were 21 dealing with all week at Lehman, that we were 22 naturally getting longer every day because our 23 hedges were either derivatives that had been 24 wiped out by the terms of their contracts or 25 short positions that were being bought in on the</p>

<p style="text-align: right;">Page 190</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 other side. 3 So, you know, asset prices were 4 imploding and we were naturally getting longer 5 every day. So his question was how long is the 6 firm, so to speak, at this moment in time. I 7 believe -- I don't -- so that's what I -- I 8 guess I tracked that down.</p> <p>9 Q. And that's what your answer to 10 Mr. McDade says? 11 A. Yeah. Yeah. 12 MR. ROTHMAN: That's all the questions 13 I have. Thank you. 14 THE WITNESS: You're welcome.</p> <p>15 EXAMINATION BY 16 MR. TECCE: 17 Q. Mr. Kirk, my name is James Tecce. I'm 18 an attorney at Quinn Emanuel. We are special 19 counsel to the Creditors Committee. I just 20 wanted to ask you a couple of follow-up 21 questions.</p> <p>22 Going back to Friday, September 19th, 23 I believe it is, I think that you had said that 24 it was your belief on that day that JPMorgan 25 Chase would be "hostile," I believe was the word</p>	<p style="text-align: right;">Page 191</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 that you used, with respect to the transaction. 3 What was the basis for that belief? 4 A. The fact that they had shut our DTC 5 account down was one issue. The other issue was 6 that Barclays had described to me they were 7 having a dispute with JPMorgan about the 8 transfer of collateral. In addition to that, 9 JPMorgan had been, my -- my understanding, it 10 had been described to me by Ian that JPMorgan 11 over time prior to the bankruptcy had been 12 squeezing a lot of additional collateral out of 13 Lehman Brothers along the way.</p> <p>14 Q. Do you have an understanding as to 15 when JPMorgan froze the DTC account? 16 A. You know, it was either Thursday or 17 Friday. I don't remember. I think it was -- 18 I'm pretty sure it was Friday, but it may have 19 been Thursday.</p> <p>20 Q. And when were you told about the 21 dispute between Chase and Barclays that you 22 described?</p> <p>23 A. Friday morning. 24 Q. Going forward -- 25 A. And that's when I learned about the</p>
<p style="text-align: right;">Page 192</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 DTC account. So I don't remember whether they 3 had closed -- I learned about it all on Friday. 4 I just don't remember if it was for that day or 5 it was for the previous day.</p> <p>6 Q. Do you know what the basis -- do you 7 have an understanding of the basis of 8 Mr. Lowitt's statements that Chase had been 9 taking collateral?</p> <p>10 A. Well, he was dealing with them 11 directly, so they were -- my understanding was 12 that they were threatening to not clear our 13 transactions without additional collateral prior 14 to the bankruptcy.</p> <p>15 Q. Did he provide any examples of that to 16 you?</p> <p>17 A. The one example that he provided was 18 that they requested Thursday night, the 11th -- 19 is that right? Yeah, the 11th, that Lehman 20 deliver another \$5 billion to them prior to the 21 opening on Friday.</p> <p>22 Q. Going forward to the 21st, I believe 23 Sunday, the day of the closing, September 21, 24 you had just spoken briefly about the dispute 25 regarding the guarantee of trades with the DTC.</p>	<p style="text-align: right;">Page 193</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Were you aware of any other disputes 3 besides that issue between Chase and Barclays at 4 that time?</p> <p>5 A. They were still arguing about the 6 transfer of collateral, your clients were there 7 for some of those arguments, in a, what I would 8 refer to as a giant conference room with 50 9 people in it and a lot of yelling.</p> <p>10 Q. Right. And do you remember the 11 substance of those disputes regarding the 12 collateral?</p> <p>13 A. JPMorgan felt as if Barclays should 14 pay them and take additional collateral to 15 complete the repo transfer from the Fed, and in 16 addition to that, they actually asked for 17 Barclays to buy additional collateral even 18 beyond that that they had gotten from Lehman 19 Brothers earlier.</p> <p>20 Q. And do you have an understanding as to 21 what the resolution of that dispute was?</p> <p>22 A. No, they wouldn't tell us.</p> <p>23 Q. Do you have an understanding of anyone 24 at Lehman who does know the resolution of that 25 dispute?</p>

<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. I don't know if anybody at Lehman does</p> <p>3 know that.</p> <p>4 Q. Do you know if Mr. McDade knows the</p> <p>5 answer?</p> <p>6 A. I don't know that. I was in the room</p> <p>7 when they told us they wouldn't tell us. I</p> <p>8 don't know if there were conversations after</p> <p>9 that.</p> <p>10 Q. Do you have an understanding if</p> <p>11 Mr. Klein knows the resolution of the dispute?</p> <p>12 A. I don't know that he knows it. He</p> <p>13 probably does.</p> <p>14 Q. Do you have an understanding as to</p> <p>15 whether or not the resolution of that dispute</p> <p>16 resulted in any additional assets being</p> <p>17 transferred or liabilities being assumed by</p> <p>18 Barclays in connection with the transaction?</p> <p>19 A. I don't know the answer to that. This</p> <p>20 was a delivered to us as a fait accompli and,</p> <p>21 you know, at 2 I went home. There may have been</p> <p>22 somebody dealing with transfers of assets and</p> <p>23 have some insight into that. Ian might have</p> <p>24 insight into it, you know, what happened past</p> <p>25 that in terms of the closing, but he may not</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 have because, you know, there may not be -- I</p> <p>3 don't think they would necessarily have had to</p> <p>4 have involved Lehman in any transfer of assets</p> <p>5 between JPMorgan and Barclays. They may have.</p> <p>6 They may not have. I don't know.</p> <p>7 (Exhibit 327, an e-mail chain dated</p> <p>8 September 21, 2008, marked for</p> <p>9 identification, as of this date.)</p> <p>10 Q. I'm handing the witness an Exhibit</p> <p>11 327, an e-mail dated 9/21/2008.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Have you ever seen this document</p> <p>14 before?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. This is a series of e-mails between</p> <p>18 myself and Jeff Michaels, who I described</p> <p>19 earlier was global head of government and agency</p> <p>20 trading, and who I was -- reached to deal with</p> <p>21 directly with the -- his counterparts at</p> <p>22 Barclays to describe what the settlement issues</p> <p>23 going forward were in his business so they could</p> <p>24 get some sense of what the risk of those</p> <p>25 settlement issues were.</p>
<p>Page 196</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. And this, again, correct me if I'm</p> <p>3 wrong, this is the issue of the settling of the</p> <p>4 trades involving the DTC?</p> <p>5 A. Yes.</p> <p>6 Q. And just going up to the e-mail Sunday</p> <p>7 September 21, 18:13:18, do you see that? I</p> <p>8 believe it's the second e-mail down from the top</p> <p>9 of the page.</p> <p>10 A. Uh-huh.</p> <p>11 Q. And Mr. Michaels asks you, I believe,</p> <p>12 "Okay, here is where we are." He says, "We had</p> <p>13 a problem with Chase on Friday re about 8B of</p> <p>14 collateral. They are the ones holding up this</p> <p>15 transaction. Chase holds the cards and Alastair</p> <p>16 and Beth are involved."</p> <p>17 What's your understanding of what</p> <p>18 Mr. Michaels is saying in that e-mail?</p> <p>19 A. He's certainly saying that JPMorgan</p> <p>20 Chase is acting as a hostile party. They're</p> <p>21 holding up the transaction. There's a dispute</p> <p>22 on Friday. I don't know what exact dispute he's</p> <p>23 referring to because there were lots of disputes</p> <p>24 with JPMorgan at this point in time. They had</p> <p>25 shut our DTC account down. They had taken the</p>	<p>Page 197</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 DTC deposit from us. They were having a dispute</p> <p>3 with Barclays at the same time. And you know,</p> <p>4 Alastair, Alastair Blackwell, as head of</p> <p>5 operations, and Beth I think it's Rudofker who</p> <p>6 he's referring to, I assume who is a lawyer,</p> <p>7 are, you know, involved in trying to settle this</p> <p>8 position.</p> <p>9 Why I asked him how many treasuries</p> <p>10 was he short in his position I don't recall.</p> <p>11 Q. What are treasuries?</p> <p>12 A. Government bonds.</p> <p>13 Q. And let's actually just go back to</p> <p>14 his -- to Mr. Michaels e-mail. He says about 8</p> <p>15 billion of collateral. Do you know whether --</p> <p>16 do you have an understanding as to whether or</p> <p>17 not that was Fed repo collateral or other</p> <p>18 collateral?</p> <p>19 A. I don't recall what collateral that</p> <p>20 was. There were a couple disputes with</p> <p>21 JPMorgan, so ...</p> <p>22 Q. And the treasuries, what portion of</p> <p>23 the assets transferred were the treasuries, what</p> <p>24 basket of the assets transferred would the</p> <p>25 treasuries have fallen into? Would they have</p>

<p style="text-align: right;">Page 198</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 been part of the Fed repo or would they have 3 been part of the, quote/unquote, unencumbered? 4 A. The issues that I'm discussing with 5 him here are settlements. So these are going 6 forward -- they're not actually positions. 7 They're going-forward settlements between Lehman 8 and other counterparties that Lehman's standing 9 in the middle buying and selling all kind of 10 securities. So that the positions were 11 reflected.</p> <p>12 This would have reflected what risk 13 there would be in settlements not settling in a 14 normal way. So that -- but to answer your 15 question, I don't -- I don't remember what the 16 percentage of treasuries were in this. I wasn't 17 dealing with him on any -- on that issue.</p> <p>18 MR. TECCE: Those are the only 19 questions I have. Thank you for your time.</p> <p>20 MR. HUME: I have just a few 21 questions.</p> <p>22 EXAMINATION BY 23 BY MR. HUME:</p> <p>24 Q. Mr. Kirk, my name is Hamish Hume. We 25 met before. I represent Barclays.</p>	<p style="text-align: right;">Page 199</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Mr. Kirk, during the week of September 3 15 to September 22, 2008 that you've been 4 questioned about, did you believe there was any 5 other viable purchaser of Lehman Brothers other 6 than Barclays?</p> <p>7 A. No.</p> <p>8 Q. Did you believe there was any other 9 alternative for Lehman Brothers other than the 10 Barclays acquisition?</p> <p>11 A. Liquidation.</p> <p>12 Q. Did you believe the Barclays 13 acquisition was the best outcome for the Lehman 14 estate for all stakeholders?</p> <p>15 A. Yes.</p> <p>16 Q. During the questioning earlier in the 17 deposition, you were asked -- you testified 18 about discussions with Mike Keegan about 19 valuation of assets, do you recall that, 20 generally?</p> <p>21 A. Yes.</p> <p>22 Q. And I think at one point you were 23 explaining that Mr. Keegan complained about 24 certain asset values and that you at some point 25 huddled with Ian Lowitt and Bart McDade to</p>
<p style="text-align: right;">Page 200</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 discuss whether there was any good basis for 3 disagreeing with Mr. Keegan's concerns. Do you 4 recall describing that?</p> <p>5 A. Yes.</p> <p>6 Q. I believe you testified that the three 7 of you concluded there wasn't really a strong 8 basis for disagreeing with Mr. Keegan. Do you 9 recall that?</p> <p>10 A. Yes.</p> <p>11 Q. During those discussions, were you 12 attempting to negotiate the best deal you could 13 for Lehman Brothers?</p> <p>14 A. Yes.</p> <p>15 Q. Do you believe you participated in 16 arm's length negotiations or that you witnessed 17 arm's length negotiations?</p> <p>18 A. I'll be clear about that. I wasn't 19 actually negotiating and I wasn't -- I had no 20 authority to negotiate. I believe we were 21 participating in arm's length negotiations, 22 Lehman was, with Barclays.</p> <p>23 Q. You testified earlier in the 24 deposition that you did not have an 25 understanding regarding whether there would be a</p>	<p style="text-align: right;">Page 201</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 gain at Barclays on day one; do you recall that 3 line of questioning?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have any knowledge about how 6 Barclays would account for this transaction on 7 its balance sheet?</p> <p>8 A. No.</p> <p>9 Q. Did you give any thought or analysis 10 to how Barclays would account for the 11 transaction on its balance sheet during the 12 negotiations?</p> <p>13 A. No.</p> <p>14 Q. Did you have any knowledge of whether 15 Barclays would be required to record an 16 intangible asset in excess of a billion dollars 17 on its balance sheet?</p> <p>18 A. No.</p> <p>19 Q. Did I understand your testimony 20 earlier that you believed many of the assets 21 being transferred to Barclays were of uncertain 22 value?</p> <p>23 A. Yes.</p> <p>24 Q. And were many of those assets going to 25 take some time to value?</p>

<p style="text-align: right;">Page 202</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Yes.</p> <p>3 Q. Did you understand the liabilities for 4 cure payments and compensation to be estimated 5 liabilities?</p> <p>6 A. Yes.</p> <p>7 Q. Did you understand that Barclays was 8 stepping into the shoes of Lehman with respect 9 to its exchange-traded derivative accounts?</p> <p>10 A. I was not aware of any agreements 11 around the derivatives.</p> <p>12 Q. You weren't involved one way or the 13 other with derivatives?</p> <p>14 A. I wasn't involved one way or the 15 other.</p> <p>16 Q. Did you generally understand that both 17 the assets and the liabilities Barclays was 18 taking over were uncertain and difficult to 19 value as of the time of the transaction?</p> <p>20 A. Yes.</p> <p>21 Q. Therefore, as of the time of the 22 transaction, was it in your mind possible that 23 after Barclays had taken the time to value the 24 assets and the liabilities in accordance with 25 its own methodology and accounted for the</p>	<p style="text-align: right;">Page 203</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 transaction under its own accounting 3 methodologies, that it would be possible that it 4 record either a gain or a loss on the 5 transaction --</p> <p>6 MR. GAFFEY: Objection.</p> <p>7 Q. -- as of day one?</p> <p>8 MR. GAFFEY: Object to the form.</p> <p>9 Q. Do you understand the question?</p> <p>10 MR. GAFFEY: You can ignore me.</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. GAFFEY: He can't, but you can.</p> <p>13 THE WITNESS: Okay. I never know with 14 these objections if I'm supposed to ignore 15 them or not.</p> <p>16 I think it was completely a matter 17 of -- I had no idea what their accounting 18 issues were on any of those fronts, so I was 19 not aware of that, and whether they would 20 end up recording a gain or loss over time 21 would depend upon market conditions, hedging 22 strategies, you know, disposition 23 strategies, et cetera, that I had no insight 24 into how they were going to execute them.</p> <p>25 Q. I understand that. I think you said</p>
<p style="text-align: right;">Page 204</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 that earlier. I'm saying, wholly apart from 3 what would happen over time, after Barclays took 4 the time to actually value the assets and 5 liabilities as they were valued on day one, 6 given the uncertainties in both the assets and 7 values that Barclays took on and the limitations 8 on what you knew about derivatives and other 9 assets, was it in your mind at least possible 10 that Barclays would record either a gain or a 11 loss on day one, as of day one of the 12 transaction?</p> <p>13 MR. GAFFEY: Objection to form.</p> <p>14 MR. ROTHMAN: Objection to form.</p> <p>15 A. Yes, it was possible.</p> <p>16 Q. Mr. Kirk, you testified a little bit 17 about the transfer of collateral when Barclays 18 replaced the Federal Reserve's lending position 19 on the repo transaction, do you recall that, 20 generally?</p> <p>21 A. Yes.</p> <p>22 Q. Were you aware of that when Barclays 23 advanced its \$45 billion in cash to replace the 24 Federal Reserve, Barclays did not receive the 25 same collateral that had been pledged by Lehman</p>	<p style="text-align: right;">Page 205</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 to the Federal Reserve in its repo?</p> <p>3 A. I was not aware of that.</p> <p>4 Q. Were you aware of the operational 5 difficulties that arose when the Fed collateral 6 was released into the Lehman clearing account so 7 that some of that collateral disappeared or was 8 tucked into other transactions and, therefore, 9 could not be transferred to Barclays?</p> <p>10 A. I was not aware of any specifics of 11 those issues. I was aware there was a -- some 12 dispute.</p> <p>13 Q. I'd like to refer you very quickly to 14 Exhibit 321.</p> <p>15 A. Okay.</p> <p>16 Q. The third-to-last page with the Bates 17 number, number in the bottom corner, number 25.</p> <p>18 A. Okay.</p> <p>19 Q. Which I believe you testified 20 reflected write-downs that were being discussed 21 or considered by Bank of America in the 22 potential Bank of America transaction; is that 23 correct?</p> <p>24 A. That is correct.</p> <p>25 Q. Was this done during that weekend</p>

<p style="text-align: right;">Page 206</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 before the bankruptcy when you were at the Fed? 3 A. This was done I believe the Friday, 4 December -- September 12th. 5 Q. And I don't know if you testified or 6 not, but whose handwriting is this on this page? 7 A. I don't know whose handwriting this 8 is. It's not mine. 9 Q. Was the general idea that Bank of 10 America wanted haircuts or discounts from the 11 marked to market book values that Lehman had for 12 these assets? 13 A. Yes. 14 Q. And was that information shared with 15 the Federal Reserve during discussions? 16 A. Yes. 17 Q. And did the Federal Reserve express 18 any surprise or disagreement with that concept? 19 A. I wasn't there when they shared it, 20 this information. 21 Q. How do you know it was shared with the 22 Federal Reserve? 23 A. Because we got this delivered to us at 24 the Federal Reserve. We shared it with -- I 25 think Bart gave a copy to Shafrazen and we shared</p>	<p style="text-align: right;">Page 207</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 it with John Mack, Vickram Pandit and John 3 Thayne and their teams. 4 Q. You testified earlier about the 5 unencumbered collateral in the clearance boxes 6 that Ian Lowitt identified as assets to be 7 transferred, do you recall that? 8 A. Yes. 9 Q. And you testified that there was an 10 agreement that those assets would be transferred 11 made on the Friday, September 19? 12 A. Yes. 13 Q. Is that right? 14 A. Correct. 15 Q. You also testified that you were aware 16 of an issue over the weekend relating to the 17 DTC's desire for some support for settlement 18 obligations on the Monday, correct? 19 A. Correct. 20 Q. And your general understanding was 21 Barclays agreed to deposit \$250 million to 22 address those settlement obligations? 23 A. Yes. 24 Q. Did anyone at any time ever tell you 25 or lead you to believe -- let me withdraw that</p>
<p style="text-align: right;">Page 208</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 and say it differently. 3 Did you at any time form an 4 understanding at any time that weekend or that 5 Monday, the 22nd, did you ever form an 6 understanding that the unencumbered collateral 7 in the clearance boxes that Ian Lowitt had 8 identified to be transferred in the transaction 9 were not going to be transferred in the 10 transaction because of the way in which Barclays 11 was dealing with the DTC settlement issue? 12 MR. ROTHMAN: Objection to the form. 13 MR. GAFFEY: Join. 14 MR. TECCE: Join. 15 A. No. 16 Q. That was never your understanding? 17 A. No. 18 MR. HUME: No further questions. 19 EXAMINATION BY 20 MR. GAFFEY: 21 Q. Just one or two. Your view that there 22 was no other viable purchaser, would that view 23 have changed if there were a \$5 billion 24 immediate gain embedded in the transaction? 25 Would you have had the view there might be</p>	<p style="text-align: right;">Page 209</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 viable purchasers then? 3 MR. HUME: Object to the form. Calls 4 for speculation. 5 A. I think the -- there were -- we were 6 open to a transaction with anybody, so if 7 somebody was willing to take that kind of risk, 8 I assume they would have showed up. 9 Q. Do you think they would have shown up 10 if they were not told there was a \$5 billion 11 haircut embedded in the transaction? 12 MR. KELLEY: Objection. Calls for 13 speculation. 14 A. There was no certainty what that 15 number was. 16 Q. If, in addition to whatever else was 17 said about the deal publicly, it was also said 18 that there was a \$5 billion haircut embedded in 19 the transaction, do you think there would have 20 been other viable purchasers, do you know? 21 MR. KELLEY: Objection. Calls for 22 speculation. 23 A. I don't know. 24 Q. Are you able to say one way or the 25 other?</p>

<p style="text-align: right;">Page 210</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A. Not really.</p> <p>3 Q. Okay. Do you know the basis of the</p> <p>4 estimated liabilities? You told Mr. Hume that</p> <p>5 you knew that the liabilities for comp and cure</p> <p>6 were estimated in some way. Do you know the</p> <p>7 basis for the estimation?</p> <p>8 A. I assume that the basis was -- I don't</p> <p>9 know the estimation. I knew it came from our</p> <p>10 Finance Department.</p> <p>11 Q. And your understanding at the time on</p> <p>12 the Friday when you were looking at this was</p> <p>13 that those were estimates based upon Lehman's</p> <p>14 books, correct?</p> <p>15 A. Upon the work that Lehman had done.</p> <p>16 Certain, you know, liabilities only</p> <p>17 come up in the nature a transaction like this,</p> <p>18 right? So you cancel contracts you have</p> <p>19 liabilities. So they would be contingent and</p> <p>20 necessarily not necessarily on your books prior</p> <p>21 to doing an acquisition like that.</p> <p>22 So the -- it's -- it's not -- it's not</p> <p>23 completely -- it wouldn't be completely just</p> <p>24 what was actually recorded on the books. There</p> <p>25 would also be other liabilities that could be</p>	<p style="text-align: right;">Page 211</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 triggered by the transaction itself.</p> <p>3 Q. And back to this issue of a viable</p> <p>4 purchaser, if it had been announced in addition</p> <p>5 to the other components of the deal that --</p> <p>6 withdrawn.</p> <p>7 You understood the assumed liabilities</p> <p>8 component of the deal to be a cost that Barclays</p> <p>9 would have in the transaction, correct?</p> <p>10 A. Correct.</p> <p>11 Q. If it had been publicly announced that</p> <p>12 the \$2 billion cost for compensation had been</p> <p>13 deliberately inflated by a billion dollars, that</p> <p>14 in your view would lower the actual cost for</p> <p>15 Barclays, correct?</p> <p>16 MR. KELLEY: Same objection.</p> <p>17 A. If --</p> <p>18 Q. If it --</p> <p>19 A. If the answer is if it was inflated,</p> <p>20 it would lower the cost, the answer is yes,</p> <p>21 that's factual, I think.</p> <p>22 Q. If it had been announced in addition</p> <p>23 to other components of the deal that the assumed</p> <p>24 liability for compensation was deliberately</p> <p>25 inflated by a billion dollars, do you have a</p>
<p style="text-align: right;">Page 212</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 view as to whether that might have attracted</p> <p>3 other viable purchasers?</p> <p>4 A. The market was so uncertain and there</p> <p>5 was so much financial stress in the list of</p> <p>6 potential purchasers that I'm not sure there was</p> <p>7 anybody who could have executed it no matter</p> <p>8 what they thought the gain was because the</p> <p>9 market would have viewed it as too risky, so to</p> <p>10 speak, and too strategically risky in many ways</p> <p>11 and too risky from a financial standpoint to</p> <p>12 approve them for any board to approve it.</p> <p>13 Q. In your view --</p> <p>14 A. No matter what the gain was.</p> <p>15 Q. Sure. And in your view, was there at</p> <p>16 any point where additional value in the deal</p> <p>17 might have attracted other viable purchasers?</p> <p>18 MR. HUME: Objection. Asked and</p> <p>19 answered.</p> <p>20 A. None with the time to actually execute</p> <p>21 it.</p> <p>22 Q. And what was your role in determining</p> <p>23 whether or not there were other actual viable</p> <p>24 purchasers?</p> <p>25 A. I didn't have a role in that.</p>	<p style="text-align: right;">Page 213</p> <p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 Q. Did you have any role at all in that?</p> <p>3 A. No, that was the role of the FIG, the</p> <p>4 FIG bankers, Financial Institutions Group.</p> <p>5 MR. GAFFEY: Thanks. Nothing further.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. ROTHMAN: One question.</p> <p>8 EXAMINATION BY</p> <p>9 MR. ROTHMAN:</p> <p>10 Q. Fair to say that you don't know how</p> <p>11 the dispute -- the terms of the resolution of</p> <p>12 the dispute with the DTC on that Sunday night?</p> <p>13 MR. HUME: Objection. Vague and</p> <p>14 ambiguous.</p> <p>15 MR. KELLEY: Asked and answered, too.</p> <p>16 A. I don't know. Did you say is it fair</p> <p>17 to say I don't know the terms?</p> <p>18 Q. You don't know, yes.</p> <p>19 A. I only know it was described that</p> <p>20 there was 250 million put into the DTC account.</p> <p>21 I don't know the full terms. As I said, there</p> <p>22 may have been other terms that I was not aware</p> <p>23 of.</p> <p>24 Q. You don't know, beyond that 250</p> <p>25 million that we discussed, you don't know one</p>

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 way or the other what was supposed to happen to
3 the unencumbered assets that had been in that
4 DTC box, correct?

5 A. No, I don't know that.

6 MR. ROTHMAN: Thank you.

7 MR. HUME: Let me have follow up on
8 that.

9 EXAMINATION BY

10 MR. HUME:

11 Q. When you say you don't know the
12 unencumbered assets in the DTC box, to the
13 extent that they were identified by Mr. Lowitt
14 as transferable assets, was it your
15 understanding they were going to be transferred
16 as part of the deal?

17 (Continued on the next page to include
18 the jurat.)

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HIGHLY CONFIDENTIAL - A. KIRK

MR. ROTHMAN: Objection to the form.

A. Yes.

MR. HUME: No further questions.

THE WITNESS: I may have misunderstood
the earlier question.

MR. GAFFEY: I'm going to have mercy.
I have no follow-up questions.

(Time Noted: 3:06 P.M.)

oOo

ALEX KIRK

Subscribed and sworn to
before me this day
of 2009.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : ss
5 COUNTY OF NEW YORK)

6 I, Kathy S. Klepfer, a Registered
7 Merit Reporter and Notary Public within and
8 for the State of New York, do hereby
certify:

9 That ALEX KIRK, the witness whose
10 deposition is herein before set forth, was
11 duly sworn by me and that such deposition is
12 a true record of the testimony given by such
13 witness.

14 I further certify that I am not
15 related to any of the parties to this action
16 by blood or marriage and that I am in no way
17 interested in the outcome of this matter.

18 I further certify that neither the
19 deponent nor a party requested a review of
20 the transcript pursuant to Federal Rule of
21 Civil Procedure 30(e) before the deposition
22 was completed.

23 In witness whereof, I have hereunto
24 set my hand this 31st day of August, 2009.
25 -----

KATHY S. KLEPFER, RPR, RMR, CRR, CLR

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